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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2976 OF 2018

Mumbai Vidyapeeth Kamgar Sanghatana ... Petitioner

104, Samarth Premises

Prakash Kotnis Marg

Opp. Hinduja Hospital

Mahim. Mumbai-400 016

vs.

University of Mumbai

Through Registrar

Fort Campus, M. G. Road

Fort, Mumbai-400 032

... Respondent

WITH

WRIT PETITION NO. 2995 OF 2018

Sujata Sandeep Sawant and 11 Ors. ... Petitioners

vs.

University of Mumbai

Through Registrar

Fort Campus, M. G. Road

Fort, Mumbai-400 032

... Respondent

WITH

WRIT PETITION NO. 2992 OF 2018

Mr. Avinash Ratnakar Gulekar & 10 Ors. ... Petitioners

vs.

University of Mumbai

Through Registrar

Fort Campus, M. G. Road

Fort, Mumbai-400 032

... Respondent

**WITH
WRIT PETITION (L) NO. 2138 OF 2018**

University of Mumbai ... Petitioner
Through Registrar
Fort, Mumbai-400 032

vs.

Mr. Avinash Ratnakar Gulekar & 12 Ors. ... Respondents

**WITH
WRIT PETITION NO. 280 OF 2019**

University of Mumbai ... Petitioner
Through Registrar
Fort, Mumbai-400 032

vs.

Mumbai Vidyapeeth Kamgar Sanghatana ... Respondent
A/301 Don October Co-op. Hsg. Society
Mahatma Gandhi Vasahat colony
Jerbai Wadia Road, Bhoiwada, Parel
Mumbai-400 012

**WITH
WRIT PETITION (L) NO. 2147 OF 2018**

University of Mumbai ... Petitioner
Through Registrar
Fort, Mumbai-400 032

vs.

Sujata Sandeep Sawant and 11 Ors. ... Respondents

**WITH
WRIT PETITION(L) NO. 2483 OF 2018**

University of Mumbai ... Petitioner
Through Registrar
Fort, Mumbai-400 032

vs.

Harish Ashok Sansare and 5 Ors. Respondents

WITH
WRIT PETITION (L) NO. 2484 OF 2018

University of Mumbai ... Petitioner
Through Registrar
Fort, Mumbai-400 032

vs.

Arjun Jeetnarayan Singh & 7 Ors. ... Respondents

WITH
WRIT PETITION (L) NO. 2485 OF 2018

University of Mumbai ... Petitioner
Through Registrar
Fort, Mumbai-400 032

vs.

Mr. Pratap Mahadev Gaikwad and 82 Ors. ... Respondents

WITH
WRIT PETITION (L) NO. 2486 OF 2018

University of Mumbai ... Petitioner
Through Registrar
Fort, Mumbai-400 032

vs.

Sonavane Kiran Baburao & 13 Ors. ... Respondents

WITH
WRIT PETITION (L) NO. 2487 OF 2018

University of Mumbai ... Petitioner
Through Registrar
Fort, Mumbai-400 032

vs.

Mumbai Vidyapeeth Kamgar Sanghatana
104, Samarth Premises
Prakash Kotnis Marg
Opp. Hinduja Hospital
Mahim. Mumbai-400 016 ... Respondents

WITH
WRIT PETITION NO. 3671 OF 2018

Santosh N. Nepale & Anr.	...	Petitioners
vs		
University of Mumbai		
Through Registrar		
Fort Campus, M. G. Road		
Fort, Mumbai-400 032	...	Respondent

WITH
WRIT PETITION (L) NO. 12 OF 2019

Mumbai Vidyapeeth Kamgar Sanghatana	...	Petitioner
104, Samarth Premises		
Prakash Kotnis Marg		
Opp. Hinduja Hospital		
Mahim. Mumbai-400 016		
vs.		
University of Mumbai		
Through Registrar		
Fort Campus, M. G. Road		
Fort, Mumbai-400 032	...	Respondent

WITH
WRIT PETITION (L) NO. 67 OF 2019

Arjun Jeetnarayan Singh & 7 Ors.	...	Petitioners
vs.		
University of Mumbai		
Through Registrar		
Fort, Mumbai-400 032	...	Respondent

WITH
WRIT PETITION (L) NO. 68 OF 2019

Savita Kailash Karde	...	Petitioners
vs.		
University of Mumbai		
Through Registrar		
Fort, Mumbai-400 032	...	Respondent

**CIVIL APPELLATE JURISDICTION
WITH
WRIT PETITION NO. 12138 OF 2018**

Pratap Mahadev Gaikwad & 71 Ors.	...	Petitioners
vs.		
University of Mumbai		
Through Registrar		
Fort Campus, M. G. Road		
Fort, Mumbai-400 032	...	Respondent

**WITH
WRIT PETITION NO. 12139 OF 2018**

Sonavane Kiran Baburao & 8 Ors.	...	Petitioners
vs.		
University of Mumbai		
Through Registrar		
Fort Campus, M. G. Road		
Fort, Mumbai-400 032	...	Respondent

**WITH
WRIT PETITION NO. 14039 OF 2018**

Shri Harish Ashok Sansare & 4 Ors.	...	Petitioners
vs		
Mumbai University		
Through Registrar		
Fort Campus, M. G. Road		
Fort, Mumbai-400 032	...	Respondent

Mr. Shailesh Naidu a/w. Dr. Ramesh Asawa, Mr. T. R. Yadav, Mr. Aniket Poojari and Mr. Manoj Gujar for the Petitioner in WP/2976/2018, WP/3671/2018, WP(L)/12/2019, WP(L)/67/2019, WP(L)/68/2019 and for Respondent in WP/280/2019, WP(L)/2484/2018 and WP(L)/2487/2018.

Mr. Srihari Aney, Senior Advocate a/w. Mr. P. M. Palshikar, Mr. Mahesh Shukla and Mr. Niraj Prajapati for Respondent in WP/2976/2018, WP/2992/2018, WP/2995/2018, WP/3671/2018, WP(L)/12/2019, WP(L)/67/2019, WP(L)/68/2019 and for the Petitioner in WP(L)/2138/2018, WP/280/2019, WP(L)/2147/2018, WP(L)/2483/2018, WP(L)/2484/2018, WP(L)/2485/2018, WP(L)/2486/2018, WP(L)/2487/2018.

Ms. Anjali Purav a/w. Ms. Swati Sharma for the Petitioner in WP/2992/2018 and WP/2995/2018.

Mr. Kiran S. Bapat i/b. Mr. Avinash N. Fhatangare for the Petitioner in WP/12138/2018 and WP/12139/2018.

Dr. D. S. Hatle i/b. Mr. Deepak P. Jamsandekar for the Petitioner in WP/14039/2018.

Mr. Shrihari Aney, Senior Advocate a/w. Mr. P. M. Palshikar, Mr. Mahesh Shukla and Mr. Niraj Prajapati for Respondent in WP/12138/2018 and WP/14039/2018.

CORAM : A.K. MENON, J.
RESERVED DATE : 13th FEBRUARY, 2019
PRONOUNCED ON : 3rd MAY, 2019

JUDGMENT

1. This group of 18 petitions are being disposed by this common order. Considering the nature of the issues raised it was appropriate that the matter be disposed finally at the stage of admission.

2. Accordingly I issue Rule. Rule is made returnable forthwith. By consent of all parties petitions are taken up for final disposal.

3. In this group of 18 petitions the issues are common. The orders impugned are passed by the Industrial Court holding that the University had engaged in unfair labour practices under item no.6 of Schedule IV of the Maharashtra Recognition of

Trade Unions and Prevention of Unfair Labour Practices Act, 1971("MRTU & PULP Act"). The university was restrained from terminating services of large number of employees without following due process of law. Before entering upon the factual background it is necessary to mention that among these 18 petitions, 10 are filed by the aggrieved employees in various categories and some unions. 8 are cross petitions filed by the university. Two petitions and two cross petitions of these 18 petitions were filed on the Appellate Side and the remaining 14 on the Original Side. The table below provides a bird's eye view of the composition of the parties in these petitions, the orders impugned therein and number of employees involved and their categories.

TABLE

Sr. No.	Writ Petition No	Industrial Court Complaint No. and date of judgment	Petitioner	No. of workmen and Cadre	Remarks
ORIGINAL SIDE					
1	WP/2976/2018	ULP NO. 385/2014 dt. 6 th January, 2018	Mumbai Vidyapeeth Kamgar Sanghatana	Total : 938 of 957 employees Jr.Clerk : 396 Security : 59 Sweeper : 59 Hamal : 57 Data entry operator : 49 Mali : 24 Lab. Assistant : 5 Lib. Assistant : 2 Computer Technician : 1 Cook : 1 Driver : 7 Helper : 2 Jr.Professional Lib.Asst : 5 Lab. Attendant : 1 Peon cum Hamal : 2 Plumber : 1 Programme Assistant : 1 System Programmer : 1 Technical Assistant : 1 Workshop Attendant : 1	

2	WP/280/2018	ULP NO. 385/2014 dt. 6 th January, 2018	Mumbai University	Total : 938 as above	Cross Petition
3	WP(L)/12/2019	ULP NO. 506/2015 dt.10 th January, 2018	Mumbai Vidyapeeth Kamgar Sanghatana	Total : 117 Jr. Clerk : 48 Computer Operator : 1 Data Entry Operator : 10 Document Officer : 1 Hamal : 2 Junior Typist clerk : 8 Lab.Attendant : 1 Peon : 40 Proof Reader : 1 Security : 1 Steno : 1 Sweeper : 3	
4	WP(L)/2487/2018	ULP NO. 506/2015 dt. 10 th January, 2018	Mumbai University	Total : 117 as above	Cross Petition
5	WP/3671/2018	ULP NO. 461/2013 dt. 10 th January, 2018	Santosh Nepale & Ors	Total : 2 Peon : 2	
6	WP/2992/2018	ULP NO. 461/2013 dt. 10 th January, 2018	Avinash Ratnakar Gulekar & Ors	Total : 11 Peon : 10 Sweeper : 1	
7	WP(L)/2138/2018	ULP NO. 461/2013 dt. 10 th January, 2018	Mumbai University	Total : 13 Peon : 12 Sweeper : 1	Cross Petition
8	WP/2995/2018	ULP/460/2013 dt. 11 th January, 2018	Sujata Sawant & Ors	Total : 12 Data entry operator : 5 Electrician : 2 Helper Electrician : 3 Helper to Plumber : 1 Library Assistant : 1	
9	WP(L)/2147/2018	ULP/460/2013 dt. 11 th January, 2018	Mumbai University	Total : 12 as above	Cross Petition

10	WP(L)/68/2019	ULP/13/2014 dt. 9 th January, 2018	Savita Kailash Karde	Junior Typist Clerk : 1	
CIVIL APPELLATE					
11	WP/14039/2018	ULP/13/2014 dt. 9 th January, 2018	Harish Sansare & Ors	Junior Typist Clerk : 5	
ORIGINAL SIDE					
12	WP(L)/2483/2018	ULP/13/2014 dt. 9 th January, 2018	Mumbai University	Junior Typist Clerk : 5	
13	WP(L)/67/2019	ULP/231/2014 dt. 15 th January, 2018	Arjun Jeetnarayan Singh & Ors	Watchman / Security Guard : 8	
14	WP(L)/2484/2018	ULP/231/2014 dt. 15 th January, 2018	Mumbai University	Watchman /Security Guard : 8	Cross Petition
CIVIL APPELLATE					
15	WP/12138/2018	ULP/282/2013 dt. 5 th January, 2018	Pratap Mahadev Gaikwad & Ors	Total : 83 Watchman / Security Guard : 71	
16	WP(L)/2485/2018	ULP/282/2013 dt. 5 th January, 2018	Mumbai University	Total : 83 Watchman / Security Guard : 71	Cross Petition
17	WP/12139/2018	ULP/37/2014 dt. 9 th January, 2018	Sonavane Kiran Baburao & Ors	Total : 14 Watchman / Security Guard : 09	
18	WP(L)/2486/2018	ULP/37/2014 dt. 9 th January, 2018	Mumbai University	Total : 14 Watchman / Security Guard : 09	Cross Petition

4. For the purpose of this judgment the facts in Writ Petition No. 2976 of 2018 would be appropriate because it is on this basis that all the parties have proceeded. The lead arguments on behalf of the employees were canvassed by Mr. Naidu and Mr. Bapat appearing for the petitioner union / employees in some of these petitions. These arguments were supplemented by Ms. Purav and Dr. Hatle. On behalf of the university arguments were canvassed by Mr. Aney, Senior Advocate and

Mr. Palshikar and supplemented by Mr. Shukla. The cause title and appearances will reveal the individual petitions canvassed by counsel.

5. By the impugned judgment dated 9th January, 2018 passed in Complaint (ULP) No. 13 of 2014 the Industrial Court allowed the complaint in part, declared that the university had engaged in unfair labour practices under Section 6 of Schedule IV of the MRTP and PULP Act, 1971. The university was restrained from committing unfair labour practices and was directed to pay salary to the complainant equal to the lowest grade of salary and allowances being paid to its regular employees from the date of the judgment. Both the petitioner and respondent alike being aggrieved are before this Court.

The factual background leading up to the impugned orders being passed are as follows :

6. The petitioners in Writ Petition No. 2976 of 2018 filed Complaint ULP No. 385 of 2014 before the Industrial Court under section 28 read with Item nos. 5, 6 and 9 of Schedule IV of the MRTP & PULP Act on behalf of 938 employees. These persons were said to be employees for many years with the University deemed to have been constituted under section 3(1) of the Maharashtra Public Universities Act, 2016 ("the 2016 Act"). The objects are set out in Section 4 of the 2016 Act, Section 5 prescribes powers and duties of the university, Section 8 empowers the State Government to exercise control in respect of certain aspects. By virtue of Section 9 the Governor of the State is deemed to be Chancellor of every university and Head of the university. The Chief Administrative Officer of the university is the Registrar whose duties, responsibilities and functions are provided for in Section 14(6). The

Registrar is the appointing and disciplinary authority for non teaching staff. The employees sought permanency for having worked for more than 240 days in a block of 12 months and as canvassed by the petitioners the employees have worked for 240 days in several such blocks of 12 months each, from the dates of their appointments.

7. The university operates in the city of Mumbai and its suburbs as also Raigad, Thane, Palghar, Ratnagiri and Sindhudurg. There are 762 colleges affiliated to it. In the complaint the petitioners inter alia sought the following declarations :

- (a) The respondent had committed unfair labour practices as aforesaid.
- (b) All the employees listed in the complaint were to be treated as permanent employees of the university and entitled to wages benefits and prerequisites as permanent employees with effect from the date on which they completed 240 days in the 12 months.
- (c) All employees be paid wages, increase in wages as per Payment of Wages Act, 1936.

8. An application for interim relief came to be filed under section 30(2) of the MRTU & PULP Act. This application was opposed. In that application interim protection was sought against discontinuation of employment and a direction to pay wages benefits and prerequisites. On 6th January, 2015 the Industrial Court after coming to a prima facie finding that the respondent university had indulged in unfair labour practices under item nos. 5, 6 and 9 of Schedule IV and restrained the university from terminating services of 938 employees. The university was also directed to pay wages on the 7th day of each succeeding month. The university

challenged the order in this Court by filing Writ Petition No. 3073 of 2015. On 26th July, 2016 the Writ Petition was disposed by consent of parties while directing the Industrial Court to decide the matter on merits. This Court framed four additional issues to be decided along with issues already before it. It would be useful to consider all the issues framed which were 10 in number.

- (1) Whether the University of Mumbai is an "industry" within the meaning of section 2(j) of the Industrial Disputes Act, 1947?*
- (2) Whether the University of Mumbai is an "Industrial Establishment" within the meaning of Section 2(e) of the Industrial Employment (Standing Orders) Act, 1946?*
- (3) Does the Maharashtra University Act, 1994 oust jurisdiction of the Industrial Court constituted under Section 4 of the MRTU & PULP Act, 1971 to decide a complaint of Unfair Labour Practice under Section 28 read with items 5, 6 & 9 of the Schedule IV?*
- (4) Whether this complaint is maintainable at law ?*
- (5) Do the Complainant prove that the Respondent University has engaged in Unfair Labour Practice under Section 28 read with items 5, 6 & 9 of Schedule IV?*
- (6) Whether the appointment of Complainants are consistent with the procedure in view of judgment passed in Writ Petition Nos. 1492/2013 and 2615/2013.?*
- (7) Whether Complainant prove that, it has locus standi to represent the workers in regards to permanency and regularization even though Complainant is not recognised union leader under the MRTP & PULP Act in the establishment of Respondent Undertaking ?*
- (8) Whether employees enlisted at Annexure-A to the complaint are entitled to equal wages and benefits at par with permanent employees on the payroll of Respondent University on the principle of 'equal pay for equal work'?*
- (9) Do the complainants are entitled for status of permanency or regularization of their service with Respondent Mumbai University ?*
- (10) What order ?*

9. Issue numbers 1, 3, 4 and 7 were answered in the affirmative and in favour of the petitioners. Issue nos. 5, 8 and 9 partly in favour of the petitioners inasmuch as it held the university guilty of unfair labour practices only under item 6 to the exclusion of item 5 and directs payment of salary to the complainant employees equal to the lowest grade of salary and allowances paid to its regular employees but only from the date of the judgment. Issue nos. 2 and 6 were answered against the petitioner and in favour of the respondent university. The University has challenged the judgment to the extent it dealt with issue nos. 1, 3, 4 and 7 in the cross petitions. According to the petitioners the findings in respect of issues 1, 3, 4 and 7 does not call for interference but they are aggrieved by the denial of equal pay from dates of appointment.

10. Secondly, the petitioners have questioned the omission by the Industrial Court to take consequential action upon finding that university had engaged in Unfair Labour Practices under Item no. 6 of Schedule IV. Mr. Naidu submitted that denial of equal pay was objectionable since it was arbitrary apart from being perverse. Relief ought not to have been granted from the date of judgment but from the date of initial appointment and there is no reason for granting benefit from the date of the judgment. That the Industrial Court was bound to hear parties before moulding reliefs but in the instant case when hearing parties it ordered for equal pay for equal work from the date of judgment. Moulding of relief was arbitrary although it should have been based on proper reasoning. It is submitted that the Industrial Court being a creature of the statute was bound to grant relief within the framework of section 30. The relief of equal pay for equal work has been

drastically curtailed by making it effective from the date of appointment to the date of judgment without valid reason and that a person who is denied benefits that he was entitled to in law is entitled to restoration of the benefits from the date of denial. There was no dispute that the temporary employees were denied the benefit of equal pay.

11. Mr. Naidu then submitted that in paragraph 3(f) of the complaint a specific averment was made to the effect that although petitioners work was identical to those performed by regular permanent employees, the wages paid to the complainants were much lower than those applicable to regular employees in the respective categories. My attention was invited to the affidavit dated 29th December, 2014 filed on behalf of the university. Apart from a bare denial in paragraph 21, the university has not dealt with the factual assertion made by the petitioner. Mr. Naidu submitted that the petitioners had adduced evidence of 4 witness which conclusively established that the work performed by the temporary workmen were similar / identical to the work done by permanent workmen in similarly placed categories. Reference was made to depositions of Amit Ashok Bhoir, Bichkule Sunil Bhairu, Amol Laxman Gaonkar, Prakash Chandrakant Kadam, Vikas Sudakarrrao Daware and Vaishali Ramesh Kamble alluding to the fact that this evidence led to the conclusion that the complainant were given work which is similar to those of the regular employees. Mr. Naidu therefore submitted that this constituted a deemed admission and must be held against the university.

12. It is contended that peons, watchmen, sweepers, gardeners and hamal are Class IV employees and there can be no difference in the job profile whether they

were engaged on permanent basis or on temporary basis. In case of clerks, laboratory assistants and data entry operators, the work would remain the same whether they were engaged on temporary or permanent basis. According to Mr. Naidu the nomenclature itself would reveal that the persons were performing similar work notwithstanding their categories as permanent employees or temporary employees. Mr. Naidu submitted that only one conclusion is possible namely that all 938 petitioners were engaged in activity which was similar to those performed by regular workmen of the university.

13. Mr. Naidu submitted that the Industrial Court had also taken note of an office order dated 17th January, 2013 whereby these persons were appointed on temporary basis as data entry operators, junior clerks cum typists and peons. However by the same office order some temporary employees were granted consolidated salaries while others were hired on daily wage basis. There was no explanation as to why, within the same category of posts, there was discrimination in the matter of remuneration, thus creating two groups of employees doing the same work. It is the contention of the petitioner that once it is established that the work carried out on temporary basis is similar to that of the work carried out by the regular employees, the university must pay the difference in wages.

14. According to Mr. Naidu in *State of Punjab and Ors. vs Jagjit Singh & Ors.* [(2017)1 SCC 148] the Supreme Court after considering several judgments came to the conclusion that temporary workmen are entitled to equal pay for equal work. Attention of the Court is also drawn to the judgment in which the Supreme Court in *Sabha Shankar Dubey vs. Divisional forest Officer* [2018(4) LLN (SC)]. Mr. Naidu

further submitted that in the case of *Jaipal vs. State of Haryana [AIR 1988-SC-1504]* the Supreme Court had directed that pay of the petitioner therein would be fixed having regard to the length of service with effect from the date of initial appointment and by ignoring the break in service on account of fresh employment. It was submitted by Mr. Naidu that the Court restricts or reduces benefit only on reasonable basis and not by way of an adhoc measure. The operative part of the judgment which directs payment from date of the judgment is arbitrary and cannot be sustained.

15. Mr. Naidu relied upon decision in the case of *Rangnath R. Kulkarni vs. Bhiwandi Nizampur Municipal Council [(2002) (95) FLR 542]* wherein this Court held that temporary employees are entitled to benefits equal to from the date of employment. It was therefore submitted that the Industrial Court had committed an error in not having granted equal pay from the date of appointment. Mr. Naidu then submitted that the Industrial Court failed to exercise statutory powers vesting in it to grant appropriate relief to eliminate unfair labour practices. It is further urged that by the operative order the Industrial Court declared the university as having engaged in unfair labour practices under Item no. 6 of Schedule IV. It restrained the university from continuing the said practice, yet it failed to take affirmative action to eliminate the unfair labour practices. It is contended that the failure of the Industrial Court resulted in abdication of its duty. Making reference to Item no. 6 of Schedule IV, Mr. Naidu submitted that the Court was duty bound to direct the university to consider appointment of temporary workmen in sanctioned posts and depending upon their seniority as a remedial and affirmative measure consequent to declaration of unfair labour practices. That upon appreciation of

evidence, the university was guilty of unfair labour practices under Item 6 of Schedule IV. The declaration of guilt also was material inasmuch as the declaration of guilt is traceable to the power under section 30(A) of the Act but the Court did not exercise power vesting in it to take affirmative action and give effect to the policy of the Act. In the course of his submissions Mr. Naidu referred to the fact that in prayer clause(b) of the complaint the petitioners sought wages on par with the permanent employees. Grant of such relief would be an affirmative action consequent to the relevant finding. However the Industrial Court merely declared that the University was indulging in unfair labour practices without taking any pro-active action to eliminate the practice. The Court while concluding did not grant relief which it should have.

16. Mr. Naidu submitted that the object of the MRTU & PULP Act is to curtail and eliminate unfair labour practice and section 27 contained a negative mandate which prohibits the employer from engaging in unfair labour practices. According to Mr. Naidu the policy of the Act is such that no person should engage in unfair labour practice, the university on the other hand are persisted in unfair labour practices. It did not fill up the vacant posts in the categories from amongst eligible temporary employees. The Industrial Court ought to have directed the University to fill up vacant posts in the category from amongst the petitioners after verifying their eligibility for the posts. It is submitted that in the case of *M.S.R.T.C. & Anr. vs. Casteribe Rajya Parivahan Karmachari Sanghatana (2009) 8 SCC 556* the Supreme Court directed MSRTC to grant permanency to workmen appointed temporarily as cleaners as and when vacant posts were available. Mr. Naidu submitted the

Supreme Court had held that power of the Industrial Court under section 30 is wide enough and affirmative action was inclusive and not exhaustive once unfair labour practice were established the Industrial Court and Labour Court were empowered to issue preventive and appropriate directions to remedy the situation. It was held that in cases where sanctioned vacant posts were available and the employer continued to engage persons on temporary basis the Industrial Court can ensure and absorb all these persons as permanent employees to the extent of vacancies and treat them as permanent employees. In the case at hand it was contended that several posts were vacant and there was no reason why Industrial court did not direct regularisation in the permanent posts.

17. Mr. Naidu submitted that the High Court in its powers under Article 226 of the Constitution of India can direct the University to grant permanency to those employees on the dates on which the sanctioned posts become vacant. It was further submitted that the employees of the university particularly can be classified under three categories.

- (i) Approved and aided.
- (ii) Approved but unaided.
- (iii) Temporary

The Industrial court had taken note of this fact, the category of approved and aided employees were thus recruited to the posts sanctioned by the State and who received salaries through grant released by the State. In the case at hand it is stated that 1319 posts were sanctioned by the State of Maharashtra and grant for payment of salary and allowances for these persons are through the State. In the category of

approved and segment posts are created by the university under the Universities Act. Salary is also paid from the University fund and employees in this category received same pay and allowances as received by the employees recruited in Government sanctioned posts.

18. Relying upon evidence on record it was submitted that the University had repeatedly approached the Government and submitted proposals for enhancing the work force in various categories but no sanction had been received. The State is believed to have sanctioned 1319, out of which 1148 are stated to be in category "C" and "D". Reference was made to the evidence of University's witness Ms. Vaishali Kamble who so deposed to this fact. Yet interestingly, in the cross examination of Ms. Kamble she deposed that due to increase in the number of courses and the population, work of the University is increasing and the increasing work required more and more persons to be employed. It was submitted that even though the University is desirous of creating new posts and engaging additional staff and they were required to obtain the sanction of the State since section 8(1)(a) of the 2016 Act which prohibits the University from creating new posts without approval of the State Government. Section 8(1)(a) reads as follows :

Section 8 :

(1) Without prior approval of the State Government, the university shall not :-

(a) Create new posts of teachers, officers or other employees;

Mr. Naidu submitted that while creation of new posts is subject to the approval of the state and operation of section 8(1)(a), appointment of persons to sanctioned posts is entirely within the jurisdiction and control of the university. The existing

vacancies could easily be filled by making appointments. This would include the non-teaching and administrative and managerial staff and there was no need to await any further approvals or clearance. It was submitted that the Registrar of the University is duly empowered by section 14(6)(b) of the Act to appoint persons other than teachers, non vacation academic staff and officers of the rank of Assistant Registrar and others. In the instant case, the facts reveal that the Registrar had omitted to perform his duty the fill up the shortfall in staff. The university engaged temporary employees for long years instead of appointing permanent staff.

19. Dealing with the aspect of vacancies Mr. Naidu submitted that the record indicated that at least 177 sanctioned posts were vacant. He invited my attention to the affidavit in lieu of examination in chief of one Vikas Sudhakar Rao Davare in support of his contention that number of vacant government sanctioned posts as of 14th December, 2015 was 177. He submitted that the Industrial Court should have directed the Registrar to appoint persons to these 177 posts from amongst temporary employees. Given a large number of temporary employees this was not a difficult task to achieve and these persons could have been granted permanent status because the university had created permanent posts in class III and IV. Large number of posts were vacant in the approved and unaided segment and the Industrial Court should have directed all vacant posts in approved but unaided category to be filled from the large numbers available. Such a step could have been taken under section 30(1) which provides as follows :

30(1). The Management Council shall be the principal executive and policy making authority of the university and shall be responsible for administering the affairs of the university and carrying out such duties, which are not specifically assigned to any other authority.

Section 30(1) clearly provides for taking affirmative action which would have included making these appointments as contemplated. Apropos creation of posts in the various cadres, the petitioners had canvassed that the University had independent power to create posts. Reliance was placed on section 5(11), 31(w) and 8(2) of the said Act which reads as below :

5(11) to create posts of directors, principals, university teachers, non-vacation academic staff, non-teaching skilled, administrative, ministerial staff and other posts required by the university, from its funds and from the funds received from other funding agencies, prescribe their qualifications, experience and pay-scales, and make appointments thereto;

8(2) The University shall be competent to incur expenditure, in consonance with the policies and directives of the State Government issued from time to time, from the funds received from –

- (a) Various funding agencies without any share or contribution from the State Government ;*
- (b) Contributions received from individuals, industries, institutions, organizations or any person whosoever, to further the objectives of the university ;*
- (c) Contributions or fees for academic or other services offered by the university for aided and self supporting academic programmes ;*
- (d) Development fund, or any other fund established by the university; for the purposes of –*
 - (i) Creation of posts in various cadres;*
 - (ii) Granting pay, allowances and other benefits to the post created through its own funds provided those posts are not held by such persons, who are holding the posts for which government contribution is received ;*
 - (iii) Starting any academic programmes on self-supporting basis*
 - (iv) Granting remunerations or incentives to its employees for performing any task assigned to them other than their regular duties and responsibilities.*
 - (v) Incurring expenditure on any development work and on welfare activities of its students and employees;*

Provided that, there is no financial liability, direct or indirect, immediate or in future, on the State Government.

31(w) to create of posts of officers, non-teaching skilled, administrative, ministerial staff and other posts from the funds of the university and from the funds received from other funding agencies, as and when required, and prescribe their qualifications, experience and pay-scales;

20. Mr. Naidu submitted that a conjoint reading of these sections will reveal the existence of plenary powers. That under section 5(11) the University had power to create posts from using its own funds and funds received from funding agencies prescribed qualifications, experience, pay scales and also make necessary appointments. Section 8(2) sets out guidelines under which the power to create posts in various cadres can be exercised by the Management Council. It is contended that section 8(2) does not contemplate approval of the State Government, but only requires expenditure incurred by the University to be in accordance with the policy and directives of the State Government. Section 31(w) empowers the Management Council to exercise powers contemplated under section 5(11). Section 31(w) is also said to be plenary in nature and no prohibition or condition of any kind is imposed upon the Management Council in exercise of its powers.

21. According to Mr. Naidu Higher and Technical Education department has formulated Maharashtra Universities Accounting Code which provides for expenditure incurred from the University funds. It is submitted that the University is entitled to incur such expenditure from the fund. Read with section 31(w) the Management Council is empowered to create posts and costs shall be incurred from the fund. In this regard the Management Council does not require to impose additional financial burden on the State Government. In view of section 8(2) salaries and allowances in respect of posts will come from the development fund or such other fund established by the University.

22. The next submission on behalf of the petitioner is that the existing posts in

various cadres were enumerated in the Government Resolution MUM/2010/77(77)/10 Subject-1 according to which the cadres and the approvals are as follows :

Sr. No.	Cadre of Petitioner Members	Govt. Approved Cadre
1	Security	93
2	Peon	89
3	Sweeper	95
4	Mali	94
5	Junior Clerk	70
6	Laboratory Attendant	87
7	Hamal	90
8	Technical Assistant	40
9	Library Attendant	80
10	Helper	88
11	Driver	69
12	Asst. Laboratory	63
13	Junior Library Assistant	39
14	Plumber	59

23. It was contended that the Management Council exercising powers under section 8(2) read with 31(w) could create sufficient posts in the existing cadres to ensure the performance of regular tasks at the University instead of engaging temporary employees and in this light the Industrial Court ought to have directed the Management Council to exercise these powers while restraining the University from indulging in unfair labour practices while continuing temporary employees were engaged to perform duties of regular selected employees. In that context reference was made to the decision of this Court in *University of Mumbai vs. Neela Bane* [2005(4) Bom CR 410] in which this Court held that an adhoc appointee

should not be replaced by a temporary employee and that a temporary employee can be removed after a regular employee is appointed in vacant posts. Services of temporary employees were directed to be continued till the posts were filled by regular selection modes. In the instant case the Industrial court had protected employment of temporary workers till disposal of the complaint. This order was continued vide order dated 1st August, 2018 by the High Court dated 26th July, 2016 that order had kept the rights and contentions of both parties open and interim orders passed in Complaint (ULP) 385 of 2014 were kept operational. The Industrial court had held that the respondent had committed unfair labour practices. The interim protection ought to have continued and the respondent university cannot terminate temporary employees by taking fresh employees to perform the same work.

24. Mr. Naidu submitted that the interim order dated 6th January, 2015 passed by the Industrial court and continued by the High Court vide order dated 26th July, 2010 ought to have been extended till all vacant posts were filled. On this basis it was contended that the Writ Petition be allowed. In effect the petitioners contended that temporary employees should be paid the same salary as the lowest grade of salary and allowances paid to regular employees from the date of first appointment. All vacant posts were to be filled up in approved and aided and unaided categories as per their seniority in the respective posts within six months and services of the temporary employees may be continued till the vacant posts are filled.

25. In support of his contention on behalf of the petitioners in WP/2976/18,

WP/3671/2018, WP(L)/12/2019, WP(L)/67/2019 and WP(L)/68/2019 Mr. Naidu submitted that the impugned order be modified to the extent protecting the employment of these workers till the vacant posts were filled by appointing persons from these temporary employees.

26. In support of his submissions Mr. Naidu relied upon the following judgment :

1. *State of Punjab and Ors vs. Jagjit Singh & Ors.* [(2017) 1 SCC 148].
2. *Sabha Shankar Dube vs. Divisional Forest Officer & Ors* [Civil Appeal No. 10956 of 2018].
3. *Jaipal and Ors. vs. State of Haryana* [AIR 1988 SC 1504]
4. *Rangnath R. Kulkarni & Anr. vs. Bhiwandi Nizampur Municipal Corporation* [(2002) 95 FLR 542]
5. *M.S.R.T.C. & Anr. vs. Casteribe Rajya Parivahan Karmachari Sanghatana* [(2009) 8 SCC 556].
6. *Hari Nandan Prasad & Anr. vs. Employer I/r to Management of FCI* [AIR 2014 SC 1848].
7. *Amarkant Rai vs. State of Bihar & Ors.* [2015 II CLR 158].
8. *Ajaypal Singh vs. Haryana Warehousing Corporation* [2015 I CLR 591].
9. *Durgabpur Casual Workers Union & Ors. vs. Food Corporation of India* [(2015) I CLR 379].
10. *ONGC Ltd. vs. Petroleum Coal Labour Union & Ors.* [2015 II CLR 772].
11. *Parke-Davis (India) Ltd vs. Mahadev Bhiku Jadhav & Ors* [2008 II CLR 638].
12. *M.C.G.M. vs. Kachra Vahtuk Shramik Sangh, Mumbai* [2017 I CLR 798]
13. *University of Mumbai vs. Neela Bane & Anr.* [(2005) (4) Bom C.R. 410]
14. *Burroughs Welcome (I) Ltd. vs. D. H. Ghosle & Ora.* [2000 III CLR 264].
15. *Kolhapur Institutes of Technology, Kolhapur vs. The State of Maharashtra *
16. *Saibaba Gramin Vikas Sanstha vs. Rashtrasant Tukdoji Maharaj Nagpur University 7 Ors.*
17. *Sudhakar Vinayak Kargaonkar, Nanded vs. State of Maharashtra & Ors.* [2000 I CLR 251]

WRIT PETITION NO. 12138 and 12139

27. WP/12138/ 2018 and WP/12139/2018 seek a Writ of certiorari, quashing and setting aside judgment dated 5th and 9th January, 2018 to the extent it denies permanency to the petitioners and consequential benefits. In these two writ

petitions arguments were led by Mr. Bapat who adopted the contentions of Mr. Naidu in the earlier petitions. While reiterating those submissions, Mr. Bapat also laid stress upon observation of the Supreme Court in *Casteribe (supra)* and in particular the fact that employees were engaged for many years and that the evidence indicates that most of them had worked for more than 240 days in a year cleaning the buses and the fact that the Corporation had contended that if the employees had been made permanent it would amount to back door entry which was not permissible. After considering all submissions the Court concluded that the employees of the Unions had proved that there were unfair labour practices under section 5 and 9 of Schedule IV and that the General Standing Orders referred to in that case could not come in the way claiming for permanency under the provisions of MRTU & PULP Act.

28. Mr. Bapat also relied upon decision of the Supreme Court in *Chief Conservator of Forest & Anr vs. Jagannath Maruti Kondhare [(1996) 2 SCC 293]*. Relying upon observation in paragraph 22 Mr. Bapat submitted that considering the object of the State Act the Court was satisfied that 25 workmen who went to Industrial Court, Pune had been kept as casual workers for long years with the primary object of depriving them of the status of permanent employees inasmuch as giving of this status would have required the employer to pay the workmen at the higher rates than the one fixed under the Minimum Wages Act. The Court decided against the employer holding that grant of permanency was writ large on the face of both the types of work.

WRIT PETITION 14039 OF 2018

29. In WP/14039/2018 the petitioner seek quashing and setting aside of the impugned judgment and allowing the complaint and a direction not to terminate services of the petitioners, to pay wages on par with regular employees from date of employment and permit resumption of services of respondent no. 5 who was on maternity leave. Dr. Hatle on behalf of the petitioners in Writ Petition 14039 of 2018 also supported submissions of Mr. Naidu and in addition he relied upon decision of the Supreme Court in *R. P. Sawant and Ors. vs. Bajaj Auto Limited and Anr.* [(2004)9 SCC 486] wherein parties while settling the matter, granted permanency to the workmen, yet transferred them to other locations without changing service their conditions.

WRIT PETITION NO. 2992 and 2995 of 2018.

30. Ms. Purav submitted a chart showing dates of appointment and posts on which they were appointed. Out of the 13 petitioners in WP/2992/2018, 10 posts were vacant. Save and except for one Sweeper and one Hamal all others were peons. Ms. Purav relied upon copies of the office orders appointing these persons some of on various dates who were appointed on purely on temporary basis. I have extracted from these letters the relevant information which is as below:

‘Shri Avinash Ratnakar Gulekar is hereby informed that he has been appointed on purely temporary basis as peon in the Post Graduate Section, for a period not exceeding six months with immediate effect with applicable break after completion of three months. His consolidated salary was Rs. 3000/- pm.’

He was first appointed on 24th November, 2018. He continued to be in employment.

The office order in its conclusion advises the Deputy registrar as follows :

‘He is advised to discontinue the services of Shri Gulekar after completion of six months period positively, under intimation to this office or till the permanent arrangement is made, whichever is earlier.’

31. Similarly in the case of other persons employment was stated to be for a temporary period on various dates. In some cases the person concerned was appointed upon promotion of the earlier incumbent against additional/vacant posts. Similar appointments were made in the case of several others as well. It is thus stated that the intention of the University was that these persons should be employed temporarily. Come what may, services must be terminated at the end of the period of six months or till permanent arrangement is made, whichever is earlier. Thus having initially maintained a six months time limit, it was not known on what basis they were continued for years. Ms. Purav therefore submitted that services of all these persons were required to be protected since earliest of these persons were employed in the year 1993 for 6 months but he is still in service. A sweeper was appointed in 1994 was still in service, remaining persons were appointed in the years 1998, 2002, 2004, 2006, 2007, 2008 and 2010.

32. WP/2992/2018 concerns 11 petitioners and WP/2995/2018 concerns 12 petitioners. The prayers are to quash and set aside the impugned judgment, to treat the petitioners as regular permanent employees of the university from the date they completed 240 days and to pay equal wages. These persons are stated to be appointed on temporary basis despite sanctioned posts being available. Ms. Purav

submitted that 12 petitioners were appointed on various dates between 3rd October, 1997 and 2nd January, 2012. Their appointments also were for period(s) not exceeding six months. In some cases five months and in some for three months. All these persons were still in employment. She contended that in the case of one Suvarna Mohan Gaikwad, a data entry operator, although she was employed on temporary basis and her services were to be discontinued on completion of six months, her services not having been so discontinued, the university addressed a letter to the Director, Academy of Theatre Arts, presumably in response to request from the trustee/addressee, that services of Ms.Gaikwad has been extended as a special case. Thus time and again it is seen that numerous persons have been appointed repeatedly for a large number of years, although they were initially appointed for temporary periods ranging from 3 to 5 to 6 months. In the case of one J. D. Gurav who was appointed "Helper-to-Electrician" the appointment letter clearly states that Gurav was appointed for six months from 7th June, 1999 to 6th December, 1999 and the post was now vacant. Considering the excellent nature of work done he was recommended for appointment by the University Engineer to attend to electrical complaints for 6 more months. In this manner it is seen that helpers were appointed in vacant posts but continued temporarily. Out of these 12 employees 6 were vacant posts others were additional posts. Ms. Purav therefore submitted that in all these cases orders of permanency may be issued.

UNIVERSITY'S SUBMISSIONS

33. The University has filed Writ Petition (L) nos. 2138/2018, 2147/2018, 2483/2018, 2484/2018, 2485/208, 2486/2018, 2487/208 and WP/280/2018. The

University has challenged the order in its petitions only so far it relates to issue nos. 1, 3, 4, and 7 and directions given in clause (ii), (iii) and (iv) of the operative part in the judgment save and except the dates of the impugned order which are passed in different complaints. Prayers on behalf of the university are identical in all these petitions challenging the impugned orders passed in the respective complaints on diverse dates. Arguments opposing the complainants' petitions and the University's cross petitions were led by Mr. Aney Sr. Advocate. He submitted that the Industrial Court had erroneously found that the University had engaged in unfair labour practices and incorrectly held that temporary employees were entitled to salaries on par with permanent employees. Mr. Aney contended that in Writ Petition 5191 of 2015 which had been filed by the University against order granting interim relief on 6th January, 2015, this Court had framed several issues while disposing the petition on 26th June, 2016 which Mr. Aney enumerated the abridged versions as follows.

- 1 Whether the University is an Industry?
- 2 Whether the University is an industrial establishment under the standing orders ?
- 3 Whether jurisdiction of the Industrial Court is ousted by Maharashtra Public Universities Act, 2016?
- 4 Whether the complaint is maintainable in law?
- 5 Whether university had engaged in unfair labour practices under section 6 of Schedule IV?
- 6 Whether the complainants appointments were legal and validly made ?
- 7 Whether the unrecognised union has locus standi to file the complaints ?
- 8 Whether employees were entitled to equal wages for equal work ?
- 9 Whether complainants are entitled to permanency or regularisation of service?

34. Mr. Aney submitted that his endeavour was to establish that the university was not an industry nor an industrial establishment and once that is established the Industrial Court has no jurisdiction to entertain and try complaints which

jurisdiction is ousted by the provisions of the Maharashtra Universities Act, 2016. The complaint not being maintainable, Mr. Aney submitted that the judgment is liable to be set aside in its entirety.

35. Mr. Aney submitted that the university is not an industry or an industrial establishment. By virtue of a Special law the jurisdiction of the Industrial Court is ousted. An unrecognised union has no locus standi to file complaint. He further submitted that orders were contrary to the law and the principle for equal pay for equal work can apply neither to employees appointed without following recruitment procedures nor can such persons be regularised or granted consequential benefits. Lastly he submitted that the university cannot create posts nor make appointments beyond those permitted by law. In support of his contention Mr. Aney relied upon definition of 'Industry' under section 3(19) of the Bombay Industrial Relations Act and definition under section 2(j) of the Industrial Disputes Act. He submitted that definitions did not support the conclusions reached by the Industrial Court. He submitted that the Maharashtra Universities Act, 1994 applicable at the material time defined University under section 2(36) to mean any university mentioned in the schedule.

36. He thus submitted that the question whether education was an industry or not was dealt with the judgment in the case of *The University of Delhi and Anr. vs. Ram Nath and Ors.* [AIR 1963 SC 1873] This decision he submitted was overruled in *Bangalore Water Supply and Sewerage Board vs. A. Rajappa and Ors.* Bangalore water supply [(1978) LAB I.C.467] which is currently under review in the Supreme Court. Mr. Aney's submission fell short of contending that one should await the

result of the review, the reason being that although education may be an industry, it does not mean that the university is also an industry.

37. He submitted that a division bench of this Court has held in *Rashtrasant Tukadoji Maharaj Nagpur University vs. Hon'ble Member, Industrial Court, Nagpur Bench* . [(2015) (3) CLR 8111] that jurisdiction of the Industrial court was ousted by the Maharashtra Universities Act, 1994. According to Mr. Aney the jurisdiction of the industrial court is now ousted by virtue of operational of special law viz. the Universities Act. According to him it prevails over the MRTU & PULP Act which is a general law. In consequence, the proceedings before the industrial court were not maintainable.

38. He submitted that the proposition canvassed by him had been considered in *Shalan w/o. Narayan Dappal and Ors. vs Board of Trustees of the Port of Bombay* [(2009) 3 MLJ 923] in which a single judge of this Court had examined the meaning of the term "Jurisdiction" which according to Mr. Aney meant extent of authority of the Court to administer jurisdiction, with regard being had to the pecuniary value and legal limitation. Mr. Aney contended that the jurisdiction of the Court may be qualified or restricted and will have to be considered with reference to place value and subject matter. Categorisation of territorial jurisdiction, pecuniary jurisdiction and subject matter of the jurisdiction is fundamental. In the instant case he submitted that there is no subject matter jurisdiction.

39. He placed reliance on the decision of *Attiq-Ur-Rehman vs. Municipal Corporation of Delhi and Anr.* [(1996) 3 SCC 37] which contemplated the principle of ouster on account of new procedure. According to Mr. Aney the 2016 Act ousts jurisdiction of the Industrial Court and the application to the MRTTP and PULP Act. He submitted that in the facts of the present case there is a special statute namely the University Act Amendment to an implied repeal of the MRTTP and PULP Act. As a result of which the impugned order is rendered null and void.

40. In support of his proposition he pressed into service decision in *Harshad S Mehta and Ors. vs. State of Maharashtra* [(2001) 8 SCC 257] *State of M. P. vs. Kedia Leather & Liquor Ltd and Ors.*, *Municipal Council Palai vs. T. J. Joseph* [AIR 1963 SC 1516]. Mr Aney then submitted that the complaints were not maintainable since it is unrecognized union that had come to Court in Writ Petition No 2976 of 2018 and Writ Petition (L) 12 of 2019. That by virtue of the observation in paragraph 52 to 55 of the Supreme Court in *Casteribe (supra)* the complaint was not maintainable, that the order even otherwise is contrary to law, since the principle of 'equal pay for equal work' will not apply. He contended that employees who were appointed without following due procedure cannot be recognized.

41. Mr Aney submitted that the University cannot create posts since it does not have power to do so without permission of the State Government. Under the 1994 Act Section 5(11) specified that creation of posts required prior approval of the State Government. That section 8(1)(a) required prior approval is a pre-condition for creation of new posts. Section 8(3) required adherence to the Code with respect to

the mode of appointments and Section 8(7) made the University liable for action by the State Government for failure to implement directions. Section 28(s) of the 1994 Act gave powers to the Management Council to create posts subject to prior approval of the State Government. Comparing the provisions of the 1994 Act with the 2016 Act, Mr. Aney submitted that 2016 Act does not contain the power similar to that of section 5(11) of the 1994 Act, but section 8(1)(a) is in pari materia and no new post can be created and no special pay or allowances can be made without prior approval of the State Government. While section 8(3) of both Acts require an application of the Standard Code in the matter of appointment. Section 8(3) of 2016 Act specifically provides that employees who were rendered surplus shall not be eligible for absorption to vacancy and any provision to the contrary will be invalid. That the power of the Management Council to create posts subject to approval of the State Government was found in section 28(s) of the 1994 Act and a similar provision is to be found in section 31(w) of the 2016 Act. He conceded that although there is no reference to the prior approval of the State Government in section 31(w), section 31(w) does not operate independent of the control contained in section 8(1). In other words section 31(w) still operates within section 8(1) and therefore without approval of the State Government a Management Council cannot exercise powers under section 31(w).

42. The next submission of Mr. Aney dealt with equal pay for equal work. Mr. Aney contended that service conditions of the permanent employees and the complainants were different. Complainants were not employed in regular sanctioned posts. There cannot be parity with the regular employees. Moreover

such parity is neither pleaded nor proved. Mr. Aney submitted that there is no mathematical formula that can be applied or any fundamental right vested in the complainants to claim equal pay. He submitted that equal pay can only arise out of regular appointment made in accordance with law. He submitted that while considering the status of temporary and permanent posts it is necessary to take into account eligibility, quality of work, confidentiality, dexterity, functional need and status of the posts. Nomenclature alone cannot determine the factor for applying the principles of equal pay for equal work. He submitted that equal pay for equal work is not an abstract doctrine and in order to be made enforceable in a Court of law and that equal pay must be for equal value of work.

43. In support of his contentions he relied upon paragraphs 42, 45 and 60 of the decision of *State of Punjab vs Jagjit Singh [(2017) 1 SCC]*. Mr. Aney further submitted that total of 8 complaints were filed between 26th December, 2014 and 22nd December, 2015. Written statements were filed in those matters. A majority of the written statements were filed on 7th July, 2016 and in the meanwhile with the extension of time written statement in complaint (ULP) 385 of 2015 was filed on 20th July, 2015 and in complaint (ULP) 506 of 2015 on 30th August, 2016. He submitted that the Act of 1994 received assent on 21st July, 1994 whereas the Act of 2016 was passed by the Legislative Assembly on 8th December, 2016. He tendered a comparative chart of provisions in the two Acts. In particular section 2(5), 2(36) and section 5(5) pertaining to definitions of Autonomy, University, Powers and Duties of the 1994 Act. In this behalf in 1994 Act he relied upon section 5(5), 5(11), 5(32), 5(35) and 5(37) and in the 2016 Act he relied upon 5(7), 5(11), 5(35), 5(37) and 5(40). He submitted that 5(11) does not find place in 2016 Act.

5(11) of 1994 Act provided for creation of non teaching skilled, administrative, ministerial and other posts with prior approval of the State Government. Similar provisions were conspicuous by their absence in the 2016 Act.

44. In the process of comparing the provisions of these Acts, Mr Aney has taken me through Section 8, 24, 27, 28, 51, 57, 58, 59, 60, 62, 63, 79 of 1994 Act and Section 8, 26, 30, 31, 71, 79, 80, 81, 82, 84, 85, 105 of the 2016 Act and submitted that the 2016 Act provides for grievance committee. In respect of the Grievance Committee under Section 16 of the Act it is contended that there is a specific provision to deal with all types of grievances including of Officers, Teachers and other employees which are not within the jurisdiction of the University or College tribunal. A Grievance Redressal Cell constituted by an Officer of the University not below the rank of Assistant Registrar is now contemplated under Chapter VII and committee consist of following persons :

- (a) retired Judge not below the rank of the District Judge, nominated by the Vice Chancellor – Chairperson;
- (b) One Dean, nominated by the Vice Chancellor;
- (c) Chancellor's nominee on the Management Council.
- (d) Registrar;
- (e) One teacher belonging to Schedule Castes or Scheduled Tribes or De-notified Tribes (Vimukta Jatis) or Nomadic Tribes or Other Backward classes and one non teaching employee nominated by the Senate from amongst its members)
- (f) Law Officer of the University – Member Secretary

This committee would hear and set off disputes and grievances as per law within three months. This provision is to be seen in section 79(6). Mr. Aney submitted also there is a College and University Tribunal which will adjudicate dispute between employees of university and the respective university and employees of autonomous colleges. It was sought to be contended that the Section 81 of the 2016 Act also provides for right of appeal of any person who is dismissed or removed from services or otherwise terminated or reduced in rank or who may be aggrieved by the decision of the grievance committee. Pressing this provision into service it was contended by Mr. Aney that an alternative mechanism is provided under the Special Law which will not necessitate seeking of any remedy under the MRTTP and PULP Act. On this basis Mr. Aney submitted that the impugned order must be set aside and the complaints dismissed.

45. Mr. Aney relied upon the following judgments

- (a) *University of Mumbai vs. Neela Bane* [2005 1 CLR 646 Bom H.C.]
- (b) *Rajesh Keshrinath Deorukhkar & Ors. vs. Mumbai University* [WP/1492/2013 and WP/2615/2013]
- (c) *State of Karnataka & Ors vs. Umadevi and Ors.* [2006 (3) LLN 78].
- (d) *State of Orissa and Anr. vs. Mamata Mohanty* [2011 AIR SCW 1332]
- (e) *Renu & Ors. vs. District & Session Judge Tis Hazari Courts, Delhi & Anr* [2014 (14) SCC 50].
- (f) *Indian Drugs & Pharmaceuticals Ltd. vs. Workman, Indian Drugs & Pharma Ltd.* [2007 1 CLR 48]
- (g) *Vice Chancellor, Lucknow University, vs. Akhilesh Kumar Khare & Anr.* [2015 (3) CLR 464].
- (j) *Mahatma Phule Agricultural University & Ors. vs. Nasik Zilla Sheth Kamgar Union and Ors* [2001(7) SSC 346].
- (k) *Maharashtra State Road Transport & Anr. vs. Casteribe Rajya Parivahan Karmachari Sanghatana* [2009 (8) SSC 556]
- (m) *Rashtrasant Tukdoji Maharaj Nagpur vs. Hon'ble Member, Industrial Court, Maharashtra, Nagpur Bench & Ors.* [2015 (3) CLR 811]
- (p) *Madhukar Baburao Achari vs. Shikshak Smarak Sanstha & Anr.* [2000(4) Bom C.R. 796]

- (q) *University of Mumbai vs. Lata Bhor* [2005 (1) Mh. L. J. 700]
- (r) *People's Welfare Society & Anr. vs. Second Labour Court & Ors.* [1998(4) Bom C.R.571]
- (s) *Municipal Council, Tirora through its Chief Officer & Anr. vs. Tulsidas Baliram Bindhade, Goindia* [2016 III CLR 569]

46. Mr. Palshikar on behalf of the respondent University had submitted that the petitioner's reliance upon the Certificate of recognition memo dated 17th June, 2016 and submitted that at the material time it was not a recognized union under section 11 of the MRTU and PULP Act. This submission was in support of the proposition that an unrecognized union cannot maintain the complaint but in my view this submission overlooks the fact that majority of the complaints are filed by employees and for that reason the contention of Mr. Palshikar is of no avail.

47. Mr. Palshikar relied upon a decision of this Court in the case of *Sandeep Tulshiram Mohite vs Registrar, Small Causes Court* [WP No. 11250 of 2015] wherein he drew my attention to the observation of the Court in paragraph 19 and the fact that the appointment order in the case of the petitioner actually mentioned that the petitioner was appointed on temporary basis that it was clear from the appointment order that the appointment was temporary and till further orders a circular which was relevant in that case relaxed condition that the candidate appointed on temporary basis need not be recommended by the employment exchange and that the candidate who was progeny of a retired employee can be appointed temporarily till a regularly selected candidate is available. It was observed that the initial appointment of the petitioner was not a regular appointment following proper recruitment procedure. Though the services of the

petitioner were regularized and the petitioner was absorbed in regular services it would account for a back door entry into services as in case of *Umadevi*.

48. Both sides have cited several judgments and it is appropriate to deal with them at this stage.

(a) In *Jagjit Singh (supra)* the Supreme Court considered the principle of equal pay for equal work and its applicability to temporary employees. Among other things considered was entitlement of temporary employees to receive minimum regular pay scale along with dearness allowance from time to time provided they were performing duties of the regular employees. The Supreme Court reiterated various earlier decisions and held that this principle is binding on all Courts. It was inter alia observed that temporary employees possessing qualification and appointment for posts which were also available in the regular appointment and performing duties similar to those in the regular posts would be eligible to be paid wages equal to minimum pay scale of regular employees. The Supreme Court has while doing so dealt with plethora of cases, considering about 53 decisions of the Supreme Court and came to the conclusion which, in summary, holds that in order to succeed, the claimant must prove that post(s) occupied by them required them to render services equivalent to similar services rendered by a person appointed, after due process, to permanent post(s). The fact that the regular post is in a different department would make no difference. The principle cannot be given effect to merely because the two posts shares the same nomenclature. If the pay scales were different in these posts on

account of variation in responsibilities attached thereto, reliability or confidentiality such differentiation will be justifiable. It was also held that persons performing similar duties may be placed in different pay scales such as selection grade in the same posts, but such differences should be well founded considering aspects of merit and seniority. The posts in which parity is claimed must be of the same hierarchy and exception carved out by the Supreme Court are where the temporary posts and the regular posts are in different establishment having different management or where establishment are in different locations at different places although ownership may be same. Similarly the principle cannot be applied where higher pay scale is given to persons discharging similar duties and with the objective of reducing stagnation and increasing promotional avenues. These are the principles that the Supreme Court has green-lighted in the facts of that case.

(a)(i) The full bench of the High Court while denying parity in pay to temporary employees had concentrated on the decision in *Umadevi(supra)*. The Court observed that the constitution bench had distinguished the issues of pay parity and regularisation of service. On the issue of parity in pay it had held that the concept of equality would be applicable but not for the purpose of absorbing temporary employees in Government service or for making temporary employees regular or permanent. That all observations in *Umadevi (supra)* were relating to subject of regularisation and granting permanency. The Supreme Court also found that in *Umadevi (supra)* the

Court had in fact directed that daily wage earners be paid wages equal to those paid to the lowest grade of their cadre. Supreme Court in *Jagjit Singh (supra)* was of the view that High Court had gone wrong in placing reliance on paragraph 44 and 48 of *Umadevi* while considering the issue of parity of pay.

(a)(ii) In arriving at this conclusion the Supreme Court had pictured what it described as a “bird's eye view” of the legal position declared by the Supreme Court in respect of equal pay for equal work. It considered the constitution bench decision in the case of *D.S. Nakara vs. Union of India [(1983) 1 SCC 305]* starting with *D S. Nakara (supra)* and a host of other decisions set out therein and then has stated a carefully filtered view of the principles culled out in these cases.

(a) (iii) Mr. Aney had placed reliance on paragraph 42 of the *Jagjit Singh (supra)* which observed that several judgments considered by *Jagjit Singh(supra)* where employers were claiming higher wages under the principle of equal pay for higher work which was premised on the ground that the duties and responsibilities rendered by these workers were in respect of the same post for which higher pay scale was allowed in other government departments. In some cases duties and responsibilities were same as of other posts with different designations to be placed in lower scale. The Court also took into consideration other judgments. Mr. Aney submitted that in the instant case these principles cannot apply.

(a) (iv) On the other hand Mr. Naidu had focused on the Supreme Court's summary of conclusions which considered a large number of cases and analysed these decisions which made it apparent that if the Court did not extend the benefit of equal pay for equal work to temporary employees it was because the employees could not establish that they render similar services as regular employees who hold corresponding posts.

(a) (v) A slightly different view was taken in *State of Haryana vs. Jasmer Singh* [(1996) 11 SCC 77] in which the Court had expressed a view that daily wage earners could not be equated with regular employees because they were not required to possess qualifications required of applicants seeking regular appointment since the same manner of selection was not applicable to daily wage earners. It was felt that the daily wages earners could not be equated with regular employees.

(a) (vi) The Supreme Court in the case of *Supreme Court Employees Welfare (supra)* had occasion to consider the doctrine of equal pay for equal work. Finding that the discretion does not come within Article 14, being an abstract doctrine, if any classification is made relating to the pay scale and such classification is unreasonable and/or if unequal pay is based on no classification then Article 14 will stand attracted. In this case I find that unequal pay results in discrimination within the meaning of Article 14 and it would qualify for case of equal pay for equal work.

(a) (vii) The Supreme Court found that while considering *Jasmer Singh (supra)* it had not considered *Bhagwan Dass vs. State of Haryana* [(1987) 4

SCC 634] in which the selection of regular employees were to be made by Subordinate Selection Board through open selection whereas daily wage earners were candidates belonging to villages and so not through any selection board or agency despite which the Court held that the benefit of equal pay for equal work could not be denied.

(a) (viii) Similarly in the case of *State of Punjab vs. Surjit Singh* [(2009) 9 *SCC 514*] the State was required to examine the claim of the respondent for parity of pay by appointing an expert committee. The matter was remanded to the High Court on the basis that interest of justice would be sub-served if the State was directed to appoint an expert committee to see whether the employees satisfied the requirement of the decision in the *State of Haryana vs. Charanjit Singh* [(2006) 9 *SCC 321*]. In *Charanjit Singh (supra)* a three judge bench considered *Jasmer Singh (supra)*, *State of Haryana vs. Tilak Raj* [(2003) 6 *SCC 123*], *Orissa University of Agriculture & Technology vs. Manoj K. Mohanty* [(2003) 5 *SCC 188*] and *State of West Bengal vs. Tarun K Roy* [(2004) 1 *SCC 347*] and declared that daily wage earners could establish that they were performing work of equal quality and if other factors were fulfilled, only then a direction to pay equal wages would be justified. Thus we can see in *Jagjit Singh (supra)* the Supreme Court embarked upon a thorough analysis of various judicial pronouncements and came to the conclusion that the workmen concerned would be given benefit.

(b) In the case of *Sabha Shankar Dubey (supra)* the appeal was against a judgment of the Allahabad High Court whereby the Division Bench upheld

the decision of the single judge dismissing a petition seeking regularisation of service and minimum pay scale of daily workers. This is one of the most recent pronouncements of the Supreme Court which quotes *Jagjit Singh (supra)* and it found in favour of the appellant observing that in view of the judgment in *Jagjit Singh (supra)* they are unable to uphold view of the High Court.

(c) In *Jaipal and others (supra)* the Supreme Court held that the instructors were entitled to the same pay scale as sanctioned to Squad Teachers. The pay of each petitioners shall be fixed having regard to the length of service with effect from date of initial appointment by ignoring break in service on account of six months fresh appointments.

(d) In *Bhiwandi Nizampur (supra)* this Court has taken a view that once the Industrial Court came to the conclusion that the intention of the Municipal council was not giving permanency and to deprive certain benefits the Industrial Court ought to have granted benefits from the date of joining and not from the date when posts were increased.

(e) In *Casteribe (supra)* the Supreme Court having considered the view in *Umadevi (supra)* has observed that the purpose and object of the MRTU & PULP Act was to define and prevent unfair labour practices appearing under the Act. Power under Section 30 is very wide and affirmative action mentioned therein is inclusive and not exhaustive. These powers were not in consideration when *Umadevi (supra)* was decided. It does not denude the

Industrial and Labour Court of their statutory powers to order permanency of workers who have been victims of unfair labour practices by holding that *Umadevi (supra)* cannot be considered as having overridden the power of the Industrial and Labour Courts. In *Casteribe(supra)* the Court found that no factual foundation had been laid by the Corporation that the relevant posts do not exist in the Corporation and that the evidence indicated otherwise. In the present case evidence also indicates that some posts did exist.

(e) (i) Although Mr. Aney submitted that in *Casteribe (supra)* the Court had cautioned of the necessity to recognise the fact that the concept of recognition of the union had been included in the MRTTP and PULP Act with a view to facilitate collective bargaining and it was necessary for employees to be represented by recognised union. He therefore emphasized the fact that in the instant case the union before the Court was not a recognised union. He invited my attention to the fact that Supreme Court had emphasized that Section 21(1) of the Act Special Provision operates as bar on unrecognised union from acting in proceeding relating to unfair labour practices

(e) (ii) I must also bear in mind that in conclusion *Casteribe (supra)* held that the affected employees in the complaints filed by unrecognised union may not be entitled to benefits of permanency but in the fact situation it was found that it would be a travesty of justice if at the stage the employees were deprived of benefits of status, wages and permanency similar to those who

are receiving such benefits only by reason of union being unrecognised and for doing complete justice the Court invoked its power under Article 142 and despite holding that two complaints were not maintainable it directed the other employees to get the same status as permanent employees.

(f) In *Amarkant Rai (supra)* the Court was considering a case of a guard who was dismissed. The Writ Petition was dismissed by a single judge and this was upheld by the Division Bench. The Court found that the university in that case was aware that the appointment had been made by the principal although he was not competent to make the appointment. The university still did not contend that appointment was ultra vires the rules of the Bihar State University Act and hence the appointment cannot be held illegal but at best irregular. The Court found that the exception carved in paragraph 53 of *Umadevi (supra)* was applicable and there was nothing on record to show that appellant was lacking in qualification or that the service was free of blemish. He was therefore directed to be regularized in service.

(g) In *Ajaypal Singh (supra)* it was found that there was no occasion for the High Court to deny the benefit of reinstatement in the absence of a pleading on the part of the management that services of the appellant workmen was terminated on the ground that initial appointment was in violation of Article 14 and 16 of the Constitution of India. In that case the Labour Court had granted reinstatement and consequential benefits. The High Court had held that it was a fit case for granting compensation in lieu of reinstatement. Since there were no pleadings on the part of the

management that appointment was violative, it was not open to the High Court to deny benefit of reinstatement. In the present case also it is not case of the university that the initial appointments of these persons was violative of constitutional provisions and denying them benefits would not be appropriate.

(h) In *Food Corporation of India & Ors (supra)* the Supreme Court observed that on appreciation of evidence the tribunal found that continued treatment of the employees as casual workers amounted to unfair labour practice under Item no.10 and that the Social Justice principle demands an order of absorption. This was subject matter of the challenge in the High Court at Calcutta which confirmed the award of the Tribunal. The Supreme Court considered it necessary to determine two issues :

- (i) Whether an issue relating to validity of initial appointment can be raised in absence of specific pleading or reference ?
- (ii) Whether the Tribunal having held that employer had committed an unfair trade practice depriving them of status and privileges of permanent workmen, whether the workmen were entitled to be absorbed?

Analysing the decision in *Umadevi*, the decision in *Casteribe* was noticed. The Court also considered the decision in *Ajaypal Singh*. It also observed that related the powers of the Industrial and Labour Courts were not the focus of consideration in *Umadevi* since it was not even subject matter of the first decision and in that behalf in *Ajaypal Singh* it was specifically found that there was no such discussions in *Umadevi* and it is always open to the

employer to issue an order of retrenchment if the initial appointment of the workmen was not in conformity with the Constitutional Provisions or Rules. In case of retrenchment, the provisions of Section 25 of the Industrial Disputes Act would be attracted if the employee concerned had worked for more than 240 days in a calendar year. However, in absence of plea of the appointment being in violation of Article 14 and 16 of the Constitution of India or other statutory rules or the appointment was by using back door method, the employer cannot subsequently take up such plea. The award was thus upheld.

(i) In *ONGC (supra)* the Court had occasion to consider whether the appointment of the respondent's workmen was irregular or illegal since the ONGC contended that they were employed under the Contract Labour (Regulation & Abolition) Act, 1970. The Government abolished contract labour for dusting and cleaning jobs in ONGC. The workmen and ONGC arrived at a settlement and a Co-operative society was formed for workmen, thereby dispensing with the contractors. ONGC contended that the right for being considered for regularization would be subject to the discretion of the ONGC. The Court considered the various provisions including the certified standing orders and confirmed the order passed by the tribunal granting relief of regularization to the concerned workmen which was found to be rightly upheld or High Court confirming that the tribunal had power to pass such an order and contention of the tribunal lacks such power was negated. Of course in that case except for one workman, others were found to be qualified as required for regularization and the plea in respect of illegal

appointment being contrary to Article 14 and 16 was held, could not be entertained because the workmen had been re-appointed for same tasks as found in the case of *Ajaypal Singh*. The Court also held that the concerned workmen had the right of being regularized under certified standing orders having completed more than 240 days in service.

(j) In *Parke-Davis (supra)* a Single Judge of this Court had considered challenge to the order of the Industrial Court and found that the mere fact that employees at work had performed duties of a permanent nature for many years together was itself sufficient to hold that there have been unfair labour practices under item 9 and it is not necessary to prove that workmen had completed 240 days in service. The decision in *Umadevi* was also cited. The court differentiated the facts and held that the employer in that case was the State whereas *Parke-Davis* was not a State or a public sector undertaking. The employer who continued to employ workmen on temporary basis would be guilty of unfair labour practices under item 6 of Schedule IV. In support of such finding it was held that it was not necessary for workmen to demonstrate that they completed 240 days of service. The mere fact of employment for many years together would be an indication that the employer had required them to work in capacity with the ulterior motive of denying them right to permanency.

(k) In *Kachra Vahatuk (supra)* the Municipal Corporation sought to quash the impugned award which granted permanency to 2700 workers employed in the Solid Waste Management Department inspite of completing 240 days.

This Court reiterated the powers of the Industrial Court and held includes power to create a contract to ensure that there is industrial peace and the impugned order was based in consonance with constitutional principles. The award was sustained. The nature and power of the Industrial tribunal and the scope of interference under article 226 was also considered. The Corporation sought quashing of the impugned award. The court considered the evidence and found that where a public body kept employing on temporary and casual basis for years with intention of depriving them benefits of permanency the Industrial tribunal is now empowered to grant relief. The Court also held that decision in *Umadevi* has been considered in *Hari Nandan Prasad (supra)*. In the context of the challenge based on violation of Article 14 and 16, the Court found that once exploitation of workmen was proved, the power of the Court is not taken away. Furthermore the Court also relied upon *Jagjit Singh (supra)* and held that since the award declared the workmen concerned to be permanent workers of the Corporation they considered the benefits on par with the others. The workmen concerned were found to be working alongside 28000 permanent workmen engaged in dusting and cleaning. Considering all these aspects the challenge was rejected .

(k) (i) I may mention here that the judgment of this court in *Kachra Vahatuk* was called into question in SLP 6202 of 2017 when on the basis of consensus, the Supreme Court held a mandatory relief to the 2700 employees who were believed to be affected actually only 1600 were actually available subject to verification. The order of this Court was therefore modified to that

limited extent requiring therefore exercise to be done for those persons who could not be verified. In *Kachra Vahatuk (supra)* the Corporation sought to quash of the impugned award which was granted permanency to 2700 workers employed in the solid waste management department in the date of completing 240 days.

(l) In *Neela Bane (supra)* a single Judge of this Court F. I. Rebello, J. as he then was, found that there was no dispute that the first respondent was employed with the petitioner University. Ordinarily if these services are no longer required for want of sanction, the Court would not permit continuation of another temporary employee being brought in to replace the current employee who may have otherwise been selected following procedure of temporary employment. A regular post must be available and that post must be filled by recruitment rules in force and by the committee constituted only after this requirement is met can the appointment be said to be regular.

(m) Apropos the remedy adopted by the petitioner in the case of *Sudhakar Vinayak (supra)* the division bench of this Court considered a choice of remedies between invoking a remedy under the MEPS Act, the Maharashtra Universities Act of 1994 or the MRTU & PULP Act and held that though the remedy shall be right of the employee and once such option is chosen, the jurisdiction of the authorities created by any of the said Statutes cannot be ousted at the behest of the Management unless it is proved that employee had an alternate and equally efficacious remedy and in that case the appeal filed

by the employee under the MEPS Act was held to be tenable. It is case of the petitioners in the case at hand, the chosen remedy was appropriate and the complaint was competent and maintained.

(n) In the case of *Burroughs Welcome (supra)* this Court had occasion to consider the power of the Court under Article 226 but there are limitations on the scope of its power to re-appreciate and re-evaluate evidence. The Industrial Court applied a wrong test in law in interpreting an entry and ignored material evidence and in such circumstances the Court would be justified in making reference to such evidence particularly when failure to consider relevant evidence leads to failure of justice in the Industrial Court.

(o) In *Kolhapur Institute of Technology & Anr (supra)* a division Bench of this Court in WP/7850/2013 had occasion to consider provisions of the Maharashtra Universities Act 1994 in particular Chapter VII thereof dealing with the grievance committee. I have observed that Section 57 indicates that a committee can take note of the grievance and try and settle the same as far as practical and make a report. As far as powers of the Management Council is concerned the Court found they are empowered by Section 28 to deal with academic matters and did not appear to have any powers to make payment of monies and therefore the Management Council, the Court felt cannot take any effective steps to redress grievances of the fourth respondent. It is on this basis that the petitioners have contended that the alternate remedy suggested by Mr. Aney would not be an effective remedy.

(p) In the case of *Saibaba Gramin Vikas Sanstha (supra)* in a group of Writ Petitions a Division Bench of this Court had occasion to considered the powers of the Management Council. The High Court had occasion to analyse section 57(2) of the 1994 Act which the Court found for dealing with the grievance and other employees of the University sub-section (2) empowered the grievances committee to entertain and consider the grievance or complaints and make a report to the management council and cast a duty on the grievance committee to consider the grievance and report to the management which was duty bound to take such an action “as it deems fit”. The Division bench made reference to the case of *Rashid Javed and Others vs. State of Uttar Pradesh [AIR 2010 SC 2275]* where the Supreme Court observed that if the authority which is empowered to hear did not have power to prove or modify the scheme or notification and make a report, it was the deciding authority namely the State Government as in that case which was empowered to propose modification or modify the approved scheme. In that light the Division Bench observed that 57(2) of the Act only empowered a committee to hear the grievance and prepare a report nothing beyond. For these reasons I am convinced that the availability of alternate remedy as contemplated by Mr. Aney cannot be accepted since even under the 2016. The relevant provisions of the 2016 Act are to be found in Section 79 (6) and (7)

“79(6) The Grievances Committee shall hear, settle and decide grievances as per the law, as far as may be practicable, within three months, from the date of filing of the complaint.

79(7) *It shall be lawful for the Grievances Committee to entertain and decide grievances or complaints relating to service of the employees, which are not within the jurisdiction of the Tribunal, after giving reasonable opportunity of being heard to both the parties. “*

MR. ANEY'S JUDGMENTS

(a) Mr. Aney also relied upon the decision of *Neela Bane (supra)* submitting that the petitioners could not be appointed on regular basis since the rules in that behalf have not been followed inter alia contending that in *Neela Bane* since the respondent was not appointed in terms of Rule (4) of the Rules she had no right to be appointed on regular basis and therefore the order impugned therein was set aside by this Court. *Neela Bane* also observed that respondent no. 1 in that case would have to be continued to be employed as provided for the judgment till regular appointments were made and till the university takes up a policy decision on such matters or otherwise finds that it had become necessary to reduce numbers in the staff. It was this aspect that has been emphasized on behalf of the petitioners.

(b) In Writ Petition 1492 of 2013 and 2615 of 2013 Mr. Aney relied upon order of the Division bench declining reliefs to the petitioners who sought regularization with the university as clerks on the basis of the law laid down in *Ramkrishna Chauhan vs Seth D. M. High School* [2007 (6) Mh.L.J. 667] , *State of Orissa & Anr. vs Mamata Mohanty* [2011 AIR SCW 1332] and *Renu and Others vs. District and Sessions Judge, Tis Hazari and Anr.* [2014(2) SCALE 262]. in that case the petitioners were appointed as clerks but without

following due process of recruitment. The Division bench in that case had also observed that the decision in *Umadevi (supra)* would not come to the assistance of the petitioners. Mr. Naidu had however contended that the facts in this decision in the case of *Rajesh Keshrinath Deorukhkar (supra)* would not apply. In *Umadevi (supra)* Paragraph 44 and 45 were highlighted by Mr. Aney which observes that concept of equal pay for equal work is different from the concept of conferring permanency on those who have been appointed on adhoc basis temporarily from past on process of selection and that the acceptance of that principle would not led to a position whereby court could direct that appointments are made without following due process of law. Where an employee is to be deemed permanent and if that was to be done the principle of equality of opportunity would stand negated.

(c) *Umadevi(supra)* observed that while directing appointments to be regularized or made permanent, courts are often swayed by the fact that a person has worked for sometime, in some case for considerable length of time but when the person accepts the temporary and casual appointment he/she is aware of the nature of the job which may not be on an arms length basis and he/she may have accepted the appointment to earn a living yet on that ground alone, the constitutional scheme of appointments could not be ignored and it would create a different mode of public appointments which could not be permitted. Having said that, the Court also recognized the fact that a total embargo on casual and temporary appointments was not possible and if such appointments were to be banned it would deprive persons who where to get temporary contractual or casual employment from an

opportunity to earn a living, given the fact that large number of persons in the country were in search of employment.

(d) In *Mamta Mohanty (supra)* the Supreme Court held that action by the State and its instrumentalities should not only be fair but should be without affection or aversion could not be suggestive of discrimination, bias and fairness is a mandatory requirement. If the procedure adopted offends fundamental fairness then it would be open to challenge.

(e) In *Renu and Others (supra)* reference was made to *Mamta Mohanty(supra)* wherein aforesaid constitutional principle of providing equal opportunity were held mandatorily requires that vacancy must be notified in advance and information on recruitment must be disseminated in a reasonable manner in public domain to ensure maximum participation. The Court observed in *Mamta Mohanty(supra)* that even in cases of temporary or adhoc appointments no person should be appointed without inviting applications from all eligible candidates.

(f) In *Indian Drug and Pharmaceutical Ltd. (supra)* the Supreme Court considered several judgments in the matters of *Delhi Development Horticulture Employees Union vs. Delhi Administration, Delhi and Ors. [AIR 1992 SC 789]*, *Dr. Surinder Singh Jamwal & Anr. vs. State of Jammu & Kashmir & Ors. [AIR 1996 Sc 2775]*, *Ashwani Kumar and Ors vs. State of Bihar & Ors. [AIR 1996 SC 2833]* and *P. U. Joshi vs. Accountant General, Ahmedabad & Ors [2003(2) SCC 632]* in which the Supreme Court had

deprecated the tendency of engaging daily workers without advertisements and observed that there is no right vested in such workers to seek regularization in accordance with the rules. That adhoc appointments did not give right for regularization and without an advertisement appointments made would be violative of Articles 14 and 16 of the Constitution of India. That the Court cannot arrogate to itself powers of the executive or the legislature.

(g) In *Vice Chancellor, Lucknow University (supra)* the Supreme Court considered its decision in *Satya Prakash & ors vs. State of Bihar & Ors [2010 1 CLR 1082 SC]* in which the Court held that the appointments were on daily wages and were not entitled to be regularized since they were never appointed to any sanctioned posts. Reference is also made to *Umadevi(supra)* in the contention that Courts cannot issue directions for absorption of daily wage earners and casual employees. The Courts are not expected to issue directions for such absorption adverting to the absence of any vested right to such appointments.

(h) Mr. Aney had also laid considerable stress in the matter of *Casteribe(supra)* in which Mr. Aney invited my attention to reference to the decisions of the Supreme Court in *Mahatma Phule Agricultural University & Ors (supra)*, *Indian Drugs and Pharmaceuticals (supra)*, *Aravali Golf Club vs Chander Hass [(2008) 1 SCC 683]* in support of his contention that the Courts cannot create posts. A fact that is reiterated in *Casteribe*, but in *Casteribe* it was found that posts were in existence in MSRTC and therefore

in exercise of plenary powers under Article 142, the Court proceeded to issue appropriate directions in relation to those employees granting them permanency.

(i) In *Rashtrasant Tukdoji Maharaj (supra)* the Court considered whether the university was an industrial establishment under section 2(e) of the Industrial Employment Standing Orders, if not whether the employers are entitled to relief of regularisation. The Court answered both in the negative. The Industrial Court had allowed complaint filed by the employees under section 28 of the MRTU and PULP Act and the University had opposed the claim of the respondent denying that they were in the category of workmen. The Industrial Court's order was challenged in Writ Petition. The Court allowed the petition, set aside the order of the Industrial Court and remanded the matter to be decided afresh. On remand the Industrial Court once again allowed the complaint and that is how the matter was once again before this Court. The University contended that it cannot be an industrial establishment and it is also submitted that the appointments of employees were not made in accordance with due procedure and therefore cannot be considered by the Court in a Writ Petition. The Court observed that it was not the case of the respondent employees that the university fell under any of the relevant clauses of section 2(2) of Payment of Wages Act and therefore not covered by clause (1) of section 2(e) of the Act of 1946. The respondent had not pleaded that the university was a factory under section 2(m) of the Factories Act nor could it be so held. The Court also considered whether the respondent had contended that the University is an industrial establishment.

The Court after considering all these submissions came to the conclusion that the employees were appointed without any advertisements or interviews having been contended that they could not establish that they were appointed after due process and the issue was fairly covered by the decision in *Umadevi* and on that basis the writ petitions were allowed. It was endeavour of Mr. Aney to demonstrate that these petitioners could not claim reliefs under the MRTP and PULP Act and that not being an industrial establishment the relief prayed for could not be granted.

(j) In *Madhukar B. Achari (supra)* contention of the College Management was that the University Act, 1994 was complete code in itself providing for all contingencies in the guidelines, including relationship with employees and that the tribunal alone had jurisdiction to entertain all questions of management. The single judge in that case held that under the Pune University Act the tribunal had exclusive jurisdiction adverting to the legislative philosophy of decentralisation of judicial powers in public interest.

(k) In *Lata Bhor & Anr (supra)* a single judge of this Court F.I. Rebello,, J as he then was had occasion to consider the decision in *Madhukar B. Achari (supra)* and observed that once the services of the respondent there in stood terminated in terms of letter of termination, it was termination within the meaning of section 59 of the Maharashtra Universities Act and the Industrial Court would have no jurisdiction to entertain the complaint. In that view of the matter the contention of the university was accepted and the petition was

allowed for want of jurisdiction of the Industrial Court to entertain the complaint. The Court after having noticed that the respondent had proceeded before the Industrial Court bonafide without any objection to the jurisdiction, the university agreed not to raise the issue of limitation.

(1) In *People's Welfare Society & Anr. (supra)* the employees involved were non teaching staff who would fall within definition of workmen within 2(s) of the Industrial Disputes Act. This court has observed that even in respect of the Industrial Disputes Act they could not have moved the Court since section 59 of the Maharashtra Universities Act covered the case of such individual employees. In so far as termination of their services are concerned, the Court further found that the MRTU & PULP Act empowered the Court to prevent an employer from terminating services of employee falling within the definition of 2(s) of the Industrial Disputes Act, whereas such remedy was not provided under the University Act or Industrial Disputes Act. The Court also observed that the jurisdiction under the MRTU & PULP Act could not be totally ousted and it is only in matters of dismissal or removal or where services are otherwise terminated or where an employee was reduced in rank that a remedy be available to an aggrieved employee. In other matters pertaining to service conditions, no remedies are available under section 59 of the Maharashtra Universities Act. The Court further held that there is no absolute ouster of jurisdiction in so far as Maharashtra Universities Act is concerned and even a case of threatened dismissal would not fall under section 59 of the said Act. The Court

observed that the jurisdiction of the Labour Court is not ousted in the facts of that case.

(m) In *Municipal Council, Tirora (supra)* the question was essentially whether in the absence of posts the respondents were entitled to claim permanency or regularisation in services on the basis of the Model Standing Orders under the Industrial Employment (Standing Orders) Act, 1946. The division bench held that in the absence of vacant posts clause 4-C of the Model Standing Orders could not be invoked.

49. Having heard the learned counsel for the parties the core issues which come up for consideration are firstly whether the Industrial Court ought to have granted relief of equal pay for the prior period commencing from the date(s) of appointment of the employees and till the date of judgment. The impugned judgment grants relief only from the date of judgment. It is the employees contention that this is flawed. The second aspect is whether the university should appoint permanent staff by filling up existing vacancies from amongst the temporary staff. I am of the view that both these reliefs ought to be granted. The question then arises is whether grant of such a direction in the writ jurisdiction of this Court will be appropriate. In my view it is. The facts have been enlisted in detail above. The finding of the Industrial Court is that the university has shown favoritism and partiality to one set of workers without reference to the merits. The employees in question had been kept as temporary employees with the intention of depriving them of the status and privileges of permanent employees.

50. The Industrial Court having arrived at that finding, it answered the issue nos. 1 in the affirmative and 3 in the negative i.e. it held that the 1994 Act does not oust the jurisdiction of the Industrial Court. The Court found that the complaint was maintainable in law. The complainant union had locus to represent the workers in regards to the claim for permanency and that they were entitled for equal wages. In so deciding the Industrial Court has considered the issues nos. 3 and 4 together in holding that the Universities Act does not override the MRTTP and PULP Act. It has considered the contention of the university that there is a grievances committee constituted under section 79(1). The fact that it deals with all types of grievances, teachers and other employees would fall under that provision which is in this definition and also concluded section 79(1) applies to full time teachers and full time approved employees. It has relied upon definition of 'teacher' to 'employee'. The expression 'employee' is not defined under the Act. The characteristics of full time approved employees would not in my view cover temporary employees. No fault can therefore be found with the conclusion arrived at apropos issue nos. 3 and 4. As far as issue no 1 is concerned Mr. Aney admits that education is an industry but the university is not. This is difficult to fathom. The Ministry of Human Resource Development has published a Handbook which returned findings that education is the single most important factor to ensure gender equality and empowerment based on data provided by National University of Educational Planning and Administration [NUEPA] Indian Government's expenditure on education as percentage of GDP has been rising from 4.10% to 4.13%* in one year. There cannot be a serious challenge to the contention that the

* *Education Statistics at a Glance, 2016*

university is an industry within the meaning of section 2(j).

51. Mr. Aney had submitted that the university was not an industry or an industrial establishment. His effort was to convince me that once that aspect was established, it would oust the jurisdiction of the Industrial court and the petitioner would have to fall back upon the Universities Act 2016. In my view the odds are loaded against the respondent university since in my view the Industrial Court has considered the first issue after considering the definition of Industry under section 3(7) of the MRTU & PULP Act and section 2(j) of the Industrial Dispute Act. Under the MRTU & PULP Act the definition of industry relies upon the definition under clause (j) of section 2 of the Industrial Disputes Act. The definition is inclusive but also provides for certain exclusions. Among the exclusions are to be found, educational, scientific, research or training institution. The issue had come up for consideration in the *Bangalore Water Supply case* which applied triple tests of systematic activities, co-operation between employer and employee and services calculated to satisfy human wants and wishes and it observed that these tests are to be met in order to constitute an industry. It was held by the Supreme court that when viewed from the angle of the Act, educational activity would form an industry and nothing can stand in the way of that conclusion. The fact that it is an Industry is also exemplified by the boom in the educational sector. The number of education opportunities, educational institutions, various courses offered all of which only indicates the huge rise in educational activity. The fact that large number of institutions cater to ever increasing populace of which 33.6% are said to be below age of 30. The median age is 27 years. The demand for education is seemingly insatiable. This is a fact admitted by one of the witness of the university who has

deposed to the fact that the demand for education is on the rise and there is shortage of staff. Viewed in that perspective it is not possible to accept the contention of Mr. Aney that the university is not an industry. In my view if education is an industry, the university is one of its crucibles. That having been said the industrial Court has rightly come to the conclusion that the university is not industrial establishment as contemplated under the Model Standing Orders.

52. The object of the MRTP and PULP Act is to prevent victimisation and to continue the task for which Bombay Industrial Relations Act, 1946 was enacted. The main object being to put an end to victimisation by unfair labour practices resorted to by employers. It also comes to the aid of the employers in as much as it can also prevent unfair labour practices on the part of the workmen and trade union. The Industrial Dispute Act itself has incorporated the same sections. Unfair labour practices includes unfair acts and omissions on the part of employers, employees and trade union. Having come to this conclusion, the next question that arises is whether the jurisdiction of the Industrial Court under the MRTP and PULP act is ousted by virtue of the Universities Act. The principal submission on this aspect canvassed by Mr. Aney is that the Universities Act is a code in itself and that it contained a specific provision constituting a grievance committee and that grievances committee alone was entitled to consider complaints on behalf of the employees.

53. The constitution of the committees was gone into and Mr. Aney had identified the relevant sections of the 2016 Act and the 1994 Act. Under Chapter

VII of the 2016 Act a Grievance Committee has been set up to deal with *“all types of grievances except grievances against the State Governments, including its officials and other employees of the university”*. The university is required to establish a grievance redressal cell. The committee consists of six members including retired judge who is the Chairperson. The creation of the grievance committee itself clarifies that the committee would deal with all types of grievances except grievances of teachers and other employees.

54. Mr. Aney had submitted that under the 1994 Act the constitution of the committee was also different though effectiveness of the committee has been enhanced by including the retired judge not below the rank of District Judge to be nominated by the Vice Chancellor as the Chairman. He thus sought to canvas the point that the Industrial Court had no jurisdiction and the impugned order was bad for want of jurisdiction.

55. By virtue of what I have observed above, apropos the definition of the expression “teacher”, it would have to be interpreted as a 'full time approved professor'. The present set of employees would certainly not be in a position to avail of any remedy from the Grievance Committee. The definition of expression “grievance” is defined in Blacks Law Dictionary as :

1. *an injury, injustice, or wrong that give ground for a complaint [a petition for redress of grievance].*
2. *The complaint itself. [the client filed a grievance with the state-bar committee]*
3. *Labor Law. A complaint that is filed by an employee or the employee's union representative that usu. concerns working conditions, esp. an alleged violation of a collective bargaining agreement.*

Viewed in that perspective, it would appear that Chapter VII would cover all types of grievances. The Universities Act does not contain any non-obstante clause which could be interpreted to mean that the grievance committee would have exclusive jurisdiction to entertain grievances in respect of conditions of service such as permanency / regularisation and the like. The object and reasons of the Act is to strengthen and regularise public universities. The Act also talks of improving the standard of education and to enable them to carry out their responsibility, widen sphere of the university, elevating the standards of university. Seen in that light, the expression employee not being defined the Grievance Committee does not appear to be effective.

56. The mechanism to deal with issues such as the facts in hand which the MRTTP & PULP Act would address cannot be considered or effectively decided by a Grievance Committee. As we have seen, the Act applies to any person who is a workman as directed under section 2(s) of the Industrial Disputes Act. The definition of workman under Industrial Dispute Act includes any person engaged in any industry to do any manual, unskilled, skilled, technical operational, clerical or supervisory work for hire or reward. The employees in the present case not being teachers would clearly fall within the definition of workman under the Industrial Disputes Act and were not part of the excluded set of employees under the exclusion under section 2(s) (1), (2), (3) and (4). Firstly, the nature of work done by these persons clearly indicates that they are not employees in a managerial capacity. Thus in my view it is not possible to accept Mr. Aney's contention that section 79 and the mechanism provided under Chapter VII will be an effective remedy. In any event an effective remedy under provision of section 79 would not prevent the

Industrial Court from exercising jurisdiction under the MRTTP & PULP Act. Section 79 itself provides for certain exclusions, it can decide grievances relating to service of the employees which are not within the jurisdiction of the tribunal. The university and college tribunal is empowered to hear, adjudicate disputes between employees of the university and in particular those which are specified under sub section (1) of section 81. Sub-Section (1) of Section 81 provides for the right of appeal in cases of employees, teacher or other employees governed by the Act who are dismissed or removed from service, compulsorily retired or reduced in rank and who are therefore aggrieved. Secondly in respect of those who are aggrieved by the decision of the grievance committee, the grievance committee itself would have limited jurisdiction in the case of such temporary hands. In any event it is case of the respondent that the university has no power to absorb these employees and that such action would be subject to State approval and State control. Viewed in that that light, there is a clear exclusion in section 79(1) itself. It would exclude grievances against the State for not sanctioning of requisite number of posts.

57. In the course of submissions Mr. Naidu produced copy of letter dated 30th October, 2017 addressed by the University to one Narendra Kumar Shah pursuant to an application made by him under Right to Information Act, 2005 requesting copies of the list of members of the University of Mumbai Grievance Committee constituted under section 57 of 1994 and 2016 Act. The response of the Public Information Officer makes an interesting reading. It has enclosed a list of persons forming part of the Grievance Committee under 1994 Act which ceased to exist from 1st March 2017 when the 2016 Act came into force and confirmed that the Grievance Committee under the 2016 Act had not been constituted since 1st March,

2017. Thus as on date of filing of the complaint, the committee was not even constituted. In my view the remedy under the MRTP & PULP Act was not incompetent. The alternate remedy argument is illusory and hence cannot be sustained.

58. One other contention of the petitioners is that section 8 of the Universities Act clearly deals with control of the State Government over the university but contains a distinction between Acts which the universities could do without the State approval and what they are required to do with State approval. Section 8(1) states that the university without prior approval of the State Government cannot create new posts, but this does not prevent the university from absorbing persons in sanctioned posts. Sub section (2) of Section 8 deals with creating new posts for other employees. The petitioners would clearly fall within the expression of other employees although the word 'employee' is not defined. Thus although section 8(1) talks of restriction on the university from creating posts of teachers, officers or other employees, only the expression 'teacher' is defined. Although the expression "officers" and "other employees" is used repeatedly, there is no express definition. Section 8(2) however affirms the competence of the university to utilise funds including the development fund or any other fund for the purpose of creating posts in various cadres. Section 8(2) d(ii) also empowers the university to pay monies and other benefits to the posts created through its own funds provided that the posts are not those for which Government contribution is received. All of this is subject to the condition that there is no financial liability, direct or indirect immediate or future of the State Government.

59. The resolution dated 6th July, 2009 of the Government of Maharashtra, Higher and Technical Education department suggests that the records with the Finance department had issued orders to Administrative department to review and finalise draft report of vacancies but should not fill vacancies. That as of 1st July, 2004, 90% vacancies in the backward class 50% were to be filled but in respect of this relaxation, due to shortage of workforce, the university's work was adversely affected. That on the one hand, due to Financial Department resolution of 10th September, 2001 vacancies of 2001 could not be filled and it is not possible to take a decision about additional designations created by increased workload. At the same time this Court had in WP/8067 of 2006 and suo moto Writ Petition 2216/20 had directed the State Government to take appropriate action to improve the quality of education in State and that due to insufficient manpower in the University it would adversely affect education. Hence a decision was taken to prepare the draft of the vacancies of non teaching staff for non agricultural universities. Universities were directed to send detailed proposals about vacancies so as to enable issuance of designation wise orders. While clarifying that there was excess manpower on some posts and therefore new recruitment was not allowed yet excess man power is retained. A statement annexed to the resolution reveals that in the Mumbai University there were vacant posts 10 in class A, 8 in Class B, 159 in Class C and 70 in Class D. 247 posts were thus vacant out of a total of 1311 posts sanctioned by the State Government.

60. Incidentally, Mumbai University has maximum number of students amongst 9 universities considered in the resolution being 5,26,673 during 2008-09 following Pune 4,80,542 whereas Mumbai university had total of 1311 sanctioned

post, Pune University had 1162 post sanctioned. Considering that these figures are of 2008–09 and past decade has seen enormous spurt in the field of education. It is therefore obvious that reduction in staff is not an option. Increasing staff may be necessary. Considering the current factual position it would appear that the continuation of services of the temporary employees may be justified subject to their suitability for the posts in question.

61. It is pertinent to mention that section 31(w) in fact provides for not only creation of posts from the funds of the University but also prescribed their qualification experience and pay scales. Clearly this is not subject to approval of the State Government. The fact remains that under section 31(w) the Management Council has similar powers to create posts from the funds of the University. Section 31 found place under Chapter IV which deals with the authorities of the University. The 2016 Act passed by the Legislative Assembly on 8th December, 2016 received assent of the Government of Maharashtra on 11th January, 2017 and although the Chapter titled providing them powers and duties of University are provided for in section 5 of the 2016 Act as well which contains identical power to create posts. The submissions that a provision similar to 5(11) of 1994 Act does not exist in 2016 Act is erroneous one since a modified provision Section 5(11) in its modified form contains substantially similar provisions. Only difference being Section 5(11) of the 2016 Act provides for creation of such posts from the funds of the University and is identical worded as section 31(w) which enlists power and duties of the Management Council with with minor alterations, but the power under section 5(11) is granted to the Management Council.

62. It was contended by the petitioners that the Maharashtra Universities Account Code is a common accounting code applicable to all non agricultural university in Maharashtra was not put in place since the preface of the code indicates it was put in place since it was felt necessary for a common code in view of the different procedures being followed in different places. Applicable to all non agricultural universities to bring about the uniform and common accounting procedure. The object of the code was to make accounting procedure clear and useful. It was devised at the time when 1994 Act was in force. It lays out a budget schedule, working of finance department, stores accounts and work accounts. It came into force on 1st April, 2012.

63. The expression "Management Council" is defined in clause 1.4 (j) to mean "*Management Council of the University.*" Other terms and expressions not specifically defined in the Code are said to have the same meaning as in the 1994 Act. Clause 1.27 to which specific reference was made by Mr. Naidu talks of expenditure and it reads thus:

Expenditure

1.27 *The following shall be the general principles governing all expenditure to be incurred from the University Funds*

(i) *That there shall be provision of Funds authorised by competent authority fixing the limits within which expenditure can be incurred.*

(ii) *That the expenditure incurred shall conform to the relevant provisions of the Act, Statutes, Ordinances and Regulations and Rules framed by the various authorities of the University.*

(iii) *That there shall exist administrative sanction, either special or general, accorded by the competent authority, as prescribed in the delegation of powers (appendix-I) authorising the particular item of expenditure.*

64. Rules are made by the Government of Maharashtra in accordance with the statutory responsibility for proper control of finance of the University. Once rules are in force it does not contemplate any sanction to be obtained prior to expenditure being incurred except that it provides for funds authorized by the competent authority. "Competent Authority" is not defined but expenditure shall conform to provisions of regulations and rules of various authorities of the university. In my view authorities of the university include the Management Council as provided in the Act. The Management Council is entitled to make its own rules in this behalf. There are provisions of budget working of the financing department and other allied provisions. Expenditure as contemplated under the code does make it subject to any further Governmental control.

65. It is appropriate to also consider that Section 26 of the Universities Act provides for establishment of a Management Council. The Management Council is the principal executive and policy making authority for administration of the affairs of the university. It consists of Senior Officers of the University, including the Vice Chancellor and the Pro Vice Chancellor a large number of others members totaling 21 persons. The Management Council is empowered by Section 31, inter alia to create posts for the university, to create posts of non teaching, skilled, administrative, ministerial staff and other posts from the funds of the university and from funds received from other funding agencies, as and when required, including to prescribe their qualification, experience and pay scales. This is to be found in section 31(w). Section 31(zg) also empowers the Management Council to define the functions, duties, powers and responsibilities of non teaching employees

in respect of posts created from the funds of the university and from the funds received from other funding agencies. Thus powers of the Managing Committee are very wide and once it includes power to create posts from the funds of the university which are not contributed by the State it cannot be said that the university must have approval of the State Government for that purpose.

66. It is pertinent to mention that section 31(w) in fact provides for not only creation of posts from the funds of the University but also prescribed their qualification experience and pay scales. Clearly this is not subject to approval of the State Government. The fact remains that under section 31(w) the Management Council has similar powers to create posts from the funds of the University. Section 31 found place under Chapter IV which deals with the authorities of the University. The 2016 Act passed by the Legislative Assembly on 8th December, 2016 received assent of the Government of Maharashtra on 11th January, 2017 and although the Chapter titled providing them powers and duties of University are provided for in section 5 of the 2016 Act as well which contains identical power to create posts. The submission that a provision similar to 5(11) of 1994 Act does not exist in 2016 Act is an erroneous one since a modified provision Section 5(11) in its modified form contains substantially similar provisions. Only difference being Section 5(11) of the 2016 Act provides for creation of such posts from the funds of the University and is identically worded as section 31(w) which enlists power and duties of the Management Council with with minor alterations, but the power under section 5(11) is granted to the Management Council.

67. The intention in providing the detailed separation of areas of operation in section 8 read with section 30 and 31 in my view leaves no manner of doubt that the university is not completely helpless in the matter of employing staff that it requires, and requires personnel it does, as evident from the deposition of the universities own witness, given the ever increasing demand for more and more courses and education playing a pivotal role in nation building it can hardly be said that there is no need for more and more staff. Education is one of the primary requirements for national development and engaging citizens in the process of development. The finding recorded in paragraph 61 of the impugned order is on the basis of an admission by one Ms Vaishali Kamble during her cross examination that the nature of work done by data entry operators, peons, watchmen, sweepers, gardeners and hamal appointed on permanent and temporary basis were more or less similar. In the case of *Gautam Sarup vs. Leela Jetly* [(2008) 7 SCC 85] it has been held that admissions made by parties to lis is admissible against him *proprio vigore* and an admission made during cross examination stood more so. It is well recognised that skill development is an essential part of growth and education both at the lower level and higher level is a critical component. The importance of education cannot be denied. The Right to Education Act is itself one such Act to provide for free and compulsory education. It is a fundamental right where every child up to the age of 14 is entitled to demand. A University's role comes in at the later stage and given the fact that every child has an inalienable right to education, the respondent can hardly be heard to say that its activities are dwindling. In that sense it is imperative that sufficient staff is provided. It is part of the capacity building that any university and educational institute will have to undertake given

the task at hand. Needless to mention university will also require to maintain sufficient reserve capacity and therefore the view that contention of the respondent university that it is powerless in the matter of creation of posts cannot be accepted.

68. In WP/2976/2018, WP/3671/2018, WP(L)/12/19, WP(L)/67/2019 WP(L)/68/2019 the relief sought is quashing and setting aside the finding to the extent that the respondent university is not guilty of unfair labour practices within the meaning of item no. 5 and the finding that the appointment of the complainants are not consistent with the procedure in view of the judgment in WP/1492/2013 and WP/2615/2013 and for declaration that university has committed unfair labour practices under item 5 of schedule of the unfair labour practices. The petitioners also seek to set aside the finding of the Industrial Court that the appointment of the complainant where not as per procedures contemplated in the judgments of this Court in WP/1492/2013 and WP/2615/2013. Reference to the order passed in WP/1492/2013 and WP/2615/2013 deals with the petition filed by two employees who sought regularisation and in the facts of that case the division bench of this Court came to the conclusion that it was not possible to consider the plea for regularisation in view of the judgment in the case of Umadevi. The fact situation then was quite different and there was no independent analysis conducted at the material time in the two matters before the division bench filed by individual employees.

69. These 18 petitions assail the impugned order passed by the Industrial Court in the numerous complaints. The operative portions are more or less identical. They grant relief on the basis of proven cases of unfair labour practices under

section 6 and grants the relief of payment of dues from the date of the judgment.

All the petitioners are aggrieved by these two aspects.

70. In WP/2992/2018 and WP/2995/2018 the employees are stated to be appointed on posts which were vacant at the time of their appointment. These are evident from numerous communications addressed to the petitioners in these cases, copies of which have been produced before me by Ms. Purav and as seen from the chart below :

WP/2992/2018

Sr.No	Name	Post	Date of Appt	On
1	Avinash Ratnakar Gulekar	Peon	03/05/1993	Vacant
2	Ravikant I. Solanki	Sweeper	26/04/1994	Vacant
3	Prashant Anant Pawar	Hamal	01/06/1998	Vacant
4	Prasad Chandrakant Rane	Peon	14/01/2002	Vacant
5	Shubhash Narayan Gurav	Peon	18/06/2004	Additional
6	Santosh P.Nepale	Peon	09/03/2006	Vacant
7	Mukesh V. Chavan	Peon	01/11/2006	Vacant
8	Pooja Narendra Kale	Peon	29/12/2007	Vacant
9	Sunil Vasant Kadam	Peon	01/06/2008	Vacant
10	Anand Balkrishna Karpe	Peon	29/12/2008	Vacant
11	Shashikant Hari Parab	Peon	05/08/2010	Vacant
12	Shashank S. Tambe	Peon	18/08/2010	Additional
13	Sandesh B.Londhe	Peon	31/08/2010	Additional

WP/2995/2018

Sr.No	Name	Post	Date of Appt	On
1	Jitendra Dhondur Gurav	Helper-to-Electrician	03/10/1997	Vacant
2	Sharad Shankar Kondilkar	Helper-to-Electrician	13/03/2003	Vacant
3	Pallavi Ram Mithagri	Data Entry Operator	15/04/2005	Additional

4	Archana D. Parab	Jr. Typist Clerk Data Entry Operator	07/07/2006 20/07/2009	Additional Additional
5	Santosh Bhaskar Gawade	Helper-to-Electrician	21/05/2007	Vacant
6	Sujit Balkrishna Kasale	Helper-to-Electrician	01/08/2007	Vacant
7	Sujata Sandeep Sawant	Data Entry operator	28/02/2008	Additional
8	Mrunmayi M. Sawant	Peon Lab. Attendant	20/09/2008 08/05/2009	Additional Additional
9	Minal Vilas Warne	Jr. Typist Clerk Data Entry Operator	18/12/2009 28/09/2011	Vacant Additional
10	Suvarna Mohan Gaikwad	Data Entry Operator	02/01/2010	Additional
11	Yogesh Mohan Dhuri	Helper-to-Electrician	01/01/2012	Vacant
12	Chetan Ganesh Shitap	Helper -to- Plumber	02/01/2012	Vacant

71. There is no dispute about the fact that these persons were appointed albeit temporarily on posts which were vacant and have been continued to be so employed as on date of the petition. In that sense the observation in the order of the division bench in Writ Petition nos 1492 of 2013 and 2615 of 2013 (supra) would not apply to such persons and the common finding across the board which led the Industrial Court to answer the issue no. 6 in the negative would not arise in the instant case.

72. In my view the filling up of existing vacancies in non teaching administrative and managerial staff is clearly permissible. It is not the respondents' case that the funds required are always funds to be received from the State. This could always be done from the universities own funds. In that respect the evidence of Vikas Sudhakar Rao Daware had established that as of December, 2015 there were 177 sanctioned posts and there is a large pool of employees of whom several have been retained over the years. In that sense it was open to the Industrial court to exercise

all its powers under section 30 to direct the university to take affirmative action to effectuate policy of the Act. This clearly is the power that the Industrial Court is proceeding under section 30(1)(b) of the Act considering the ratio in the case of *Jagjit Singh* (supra). No doubt that temporary workmen are entitled for equal pay for equal work and Industrial Court having found in favour of the employees ought not to have restricted the benefit granted to employees in recognition of unfair labour practices been recognised to restrict payment from date of the judgment. In my view, there is no justification in restricting payment from date of the judgment. The judgment recognises the fact that the employees concerned were engaged in the same work that has been done by the permanent employees. In fact having concluded that unfair labour practices were involved there is no justification in denying the benefit for the prior period, that would be contradictory in terms.

73. The reason for the impugned order omitting to grant relief on the basis of unfair labour practices under Item no. 5 is not clear. The impugned order has clearly held that temporary workers had been continued for years depriving them of the status and privileges of permanent employees. Inherent in that finding, is the partiality shown to one set of workers. Item nos. 5 and 6 share common elements. Item 5 by itself operates in a space where favouritism or partiality is shown to one set of workers. These need not be temporary workers. It will apply to all workers. However item 6 is restricted to persons employed as badlis, casuals or temporary employees and continuing them for years together in that capacity with the intention of depriving them of privileges of the permanent employees. Persons subjected to such deprivation will include the favouritism or partiality shown to the

other set and in the facts of the present case since there are different sets of employees working in the same capacity some of whom are permanent and some who are temporary. item 6 would also operate independent of item no. 5 in respect of persons who are engaged in as badlis and casual temporary labour and those who have no fellow peers, viz engaged as permanent employees. In the instant case in almost all categories of employees, the university has permanent and temporary persons. I am therefore of the view that the Industrial Court was required to find the university guilty of unfair labour practices under item 5 as well.

74. This view finds justification in the fact that when the complaints were filed, the employees have apparently not considered the dual standards to be violative of their rights. Although they may have been subjected to such unfair labour practices from date of their engagement, I must not lose sight of the fact that the engagement started for a short periods but as evidence on record has shown these temporary appointments were renewed and repeatedly over several years. Given the fact that the employees in question are all gainfully engaged and are not found to be excessive or in surplus as established from the evidence led by the university, the university must be restrained from terminating their services except by following due process.

75. It would also be appropriate that the university fills up the sanctioned posts by filling up vacant posts from amongst the petitioners since in respect of the sanctioned posts it is not necessary to await State Government approval and where fresh recruitment has to be resorted to for this purpose, the university should proceed to fill up these posts.

76. In view of the conclusion that I have reached the university's challenge cannot succeed whereas the employees are entitled to relief and accordingly the following order is passed;

(i) The impugned judgments to the extent they hold that the respondent university is not guilty of unfair labour practices under Item 5 of Schedule IV is set aside. I hold that the facts reveal that the university has committed unfair labour practice under Item no. 5 and 6 of Schedule IV of the MRTU & PULP Act.

(ii) The finding in the impugned judgment that the appointments of the complainants were inconsistent with the judgments of this Court in WP/1492/2013 and WP/2615/2013 is set aside since they did not arise for consideration

(iii) The university shall grant benefits contemplated in the operative portions of the impugned judgments from the dates of filing the respective complaints. Salary shall be paid on or before the 7th day of each month. Arrears of salary and allowances shall be paid within a period of six months from today.

(iv) The University shall appoint employees in vacant posts firstly from amongst the petitioners provided they are still serving. In the meantime they are restrained from terminating services of the petitioners, save and except by following due process. It is clarified that the benefit of this order will also be available to those employees who were on leave at the material time.

(v) Rule is made absolute in the above terms. Petitions are accordingly disposed.

(vi) No costs.

(A. K. MENON, J.)